

BEFORE THE
ILLINOIS COMMERCE COMMISSION

COVAD COMMUNICATIONS COMPANY) DOCKET NO.
) 00 -0312
Petition for Arbitration Pursuant to) (CONSOL.)
Section 252(b) of the Telecommunications)
Act of 1996 to Establish an Amendment)
for Line Sharing to the Interconnection)
Agreement with Illinois Bell Telephone)
Company, d/b/a Ameritech Illinois, and)
for an Expedited Arbitration Award on)
Certain Core Issues.)

RHYTHMS LINKS, INC.) DOCKET NO.
) 00 -0313
Petition for Arbitration Pursuant to)
Section 252(b) of the Telecommunications)
Act of 1996 to Establish an Amendment)
for Line Sharing to the Interconnection)
Agreement with Illinois Bell Telephone)
Company, d/b/a Ameritech Illinois, and)
for an Expedited Arbitration Award on)
Certain Core Issues.)

Springfield, Illinois
June 28, 2000

Met, pursuant to notice, at 1:00 P.M.

BEFORE:

MR. DONALD L. WOODS, Examiner

SULLIVAN REPORTING COMPANY, by
Cheryl A. Davis, Reporter, #084 -001662

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20 (Appearing on behalf of Rhythms Links,
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14 (Appearing on behalf of the Staff of the
15 Illinois Commerce Commission)

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1 PROCEEDINGS

2 EXAMINER WOODS: I call for hearing Dockets
3 00-0312 and 00-0313. These are petitions for
4 arbitrations pursuant to Section 252(b) of the
5 Telecommunications Act of 1996. Docket 0312 is a
6 proceeding involving Covad Communications Company.
7 Docket 0313 is a proceeding involving Rhythms Links,
8 Incorporated.

9 This cause comes on for hearing before
10 Donald L. Woods, duly appointed Hearing Examiner,
11 under the authority of the Illinois Commerce
12 Commission. The purpose of today's hearing is for
13 the introduction into evidence of exhibits, the
14 taking of testimony, and the cross-examination of
15 witnesses, if any.

16 At this time I'd take the appearances of
17 the parties, please, beginning with the Applicants.

18 MS. HIGHTMAN: Carrie J. Hightman, Schiff,
19 Hardin and Waite, 6600 Sears Tower, Chicago, Illinois
20 60606, appearing on behalf of Rhythms Links, Inc. And
21 Covad Communications Company.

22 MS. FRANCO-FEINBERG: Felicia Franco Feinberg,

1 on behalf of Covad Communications Company, 8700 West
2 Bryn Mawr, Suite 800 South, Chicago, Illinois 60631.

3 MR. BOWEN: Stephen P. Bowen, Blumenfeld &
4 Cohen, 4 Embarcadero Center, Suite 1170, San
5 Francisco, California 94114, appearing for Rhythms
6 Links, Inc..

7 MR. BINNIG: Christian F. Binnig and Kara K.
8 Gibney, of the law firm of Mayer, Brown and Platt,
9 190 South La Salle Street, Chicago, Illinois 60603,
10 appearing on behalf of Ameritech Illinois.

11 MR. ASHBY: Danny Ashby and Van VanBebber,
12 V-A-N-B-E-B-B-E-R, Hughes & Luce, appearing for
13 Ameritech Illinois, 1717 Main Street, Suite 2800,
14 Dallas, Texas 75201.

15 MR. REED: Darryl Reed, Office of General
16 Counsel, 160 North La Salle, Suite C-800, Chicago,
17 60601, on behalf of the Staff of the Illinois
18 Commerce Commission.

19 EXAMINER WOODS: Any additional appearances?

20 MS. HIGHTMAN: No, but I would like to move for
21 the admission of Mr. Bowen to practice before the
22 Commission in these consolidated proceedings.

1 EXAMINER WOODS: I was going to take that up in
2 mass.

3 MR. BINNIG: I was also going to move for the
4 admission of Mr. Ashby and Mr. VanBebber for that
5 purpose as well.

6 EXAMINER WOODS: Any objection?

7 MR. REED: Staff has no objection.

8 EXAMINER WOODS: Permission is granted.

9 Any additional appearances? Let the record
10 reflect no response.

11 We are convening today, but I understand
12 that the hearings are expected to extend out over the
13 course of the next two days at least, so with that in
14 mind, I'd like any witnesses in the room at this time
15 that intend to testify over the course of the next
16 two and half days to please stand and be sworn.

17 (Whereupon nine witnesses
18 were sworn by Examiner
19 Woods.)

20 EXAMINER WOODS: Thank you. Be seated.

21 My understanding is that we're going to
22 take Staff witnesses today. Is that correct?

1 MR. REED: That would be correct, Mr. Examiner.

2 MR. BINNIG: Your Honor.

3 MS. HIGHTMAN: Your Honor.

4 MR. BINNIG: I guess I had one preliminary
5 matter that I was going to raise, and you may choose
6 to address it or not to address it, as you see fit.

7 One of the things that we're curious about
8 is -- and taking into account that you're also the
9 Hearing Examiner for the line sharing tariff
10 investigation proceeding, what you view as the
11 interplay, if any, between this proceeding and that
12 proceeding, and to put a finer point on it, is it
13 your view that the provisions adopted in this
14 arbitration would be interim in nature subject to
15 that tariff proceeding result? Would that apply to
16 any terms and conditions adopted in this
17 arbitration? Only some? It would be helpful I
18 think, at least for us in terms of the cross that we
19 do, if we had an idea of that interplay.

20 MS. HIGHTMAN: On behalf of the Petitioners, I
21 think that the issues that Mr. Binnig has raised are
22 issues that arise as a result of some of the verified

1 statements that have been filed in this case. To the
2 extent the parties have taken positions regarding
3 what issues should be resolved in this proceeding and
4 what issues can be resolved or deferred to the other
5 tariff investigation case docket, I think the parties
6 can be questioned about what their positions are on
7 those matters, and it's for the Hearing Examiner to
8 ultimately decide, you know, how the issues should be
9 resolved, whether here or there.

10 At this point I think, you know, that was
11 one of -- this is related to the question you asked
12 about having the matrix and about what issues are
13 still on the table. There are no issues that I know
14 of that have been resolved. There are
15 recommendations of the parties to address certain
16 pricing issues on an interim basis in this docket,
17 and nothing else has changed other than that, meaning
18 that the permanent pricing would be resolved in the
19 tariff investigation case, but I'm not sure -- I
20 don't think it would be appropriate to have any
21 ruling at this point; I think maybe an understanding
22 of what the parties' positions might be. I don't

1 know if you at this point can actually rule on that
2 issue.

3 EXAMINER WOODS: Mr. Reed.

4 MR. REED: Thank you, Mr. Examiner.

5 Staff has taken the position, as the
6 parties may well have gathered by the brevity of its
7 testimony, that the general tariff proceeding, as
8 filed by Ameritech, will be controlling to the extent
9 that the issues -- that certain issues raised here
10 are also addressed in that proceeding. To the extent
11 there are issues raised here that are not addressed
12 in the general tariff proceeding, the Commission has
13 previously stated that to the extent there is a
14 conflict between a tariff and an interconnection
15 agreement, the interconnection agreement will
16 control. Until such point in time as the Commission
17 has articulated another view, that is the modus
18 operandi that Staff is following in this proceeding.

19 EXAMINER WOODS: Well, is there any general
20 disagreement among the parties as to how this should
21 play out?

22 MR. BINNIG: I guess my only concern is with

1 respect to -- I mean I think it's clear from -- at
2 least my understanding from looking at the testimony
3 is that there appears to be a consensus that pricing
4 issues decided in this arbitration would be decided
5 on an interim basis. What I don't know is whether
6 there's a consensus with respect to non-pricing
7 issues.

8 What I hear Mr. Reed saying is that any
9 issue that is addressed in the line sharing tariff
10 investigation proceeding, whether pricing or
11 non-pricing, would control ultimately versus what's
12 decided in this arbitration. What I think I heard
13 from Covad and Rhythms is that if a non-pricing issue
14 is resolved in this arbitration, that that provision
15 would control, regardless of what happens in the line
16 sharing investigation. Now I don't know if that's
17 their position or not, but if they want a second bite
18 at the apple, that is if their view is that it's
19 permanent if it's a decision in their favor, but if
20 it's a decision that's not in their favor they can
21 relitigate it in the line sharing tariff
22 investigation, I think that's improper.

1 EXAMINER WOODS: But wouldn't that cut both
2 ways? I mean that seems to me more likely than not
3 to be what's going to happen, and I'm not sure what
4 -- when we're using the term control, I'm not sure
5 what that means. I mean it would seem to me that if
6 a party has an interconnection agreement and the
7 party with whom they have an interconnection
8 agreement files a tariff with more favorable terms,
9 then I don't know why they would be precluded from
10 simply taking whatever is offered in the tariff at
11 more favorable terms under the tariff.

12 MR. BINNIG: I think it's the point that
13 Mr. Reed just made is that the Commission has -- and
14 this is in the MCI Manual Order case, they made it
15 clear that if you have an interconnection agreement
16 that governs a certain subject and sets out the terms
17 and conditions for that subject, if there's a tariff
18 that has different terms and conditions, you can't
19 take advantage of that tariff. You are bound by the
20 interconnection agreement. It gives effect to
21 Section 251 of the federal Act which says these
22 agreements are binding.

1 MS. HIGHTMAN: But let me --

2 EXAMINER WOODS: Okay.

3 MR. REED: 99-0379 is I believe the docket
4 number wherein the Commission articulated that
5 position. However, as Mr. Binnig is well aware, to
6 the extent that there are issues that are raised and
7 the Commission clearly articulates a rationale for
8 changing said position, clearly it is not binding,
9 but that is the latest pronouncement on the issue of
10 a conflict between a tariff and an interconnection
11 agreement. Then the interconnection agreement would
12 control vis-a-vis the tariff.

13 MS. HIGHTMAN: I would just like to for the
14 record state the Petitioners' view that we don't
15 necessarily agree with the conclusion that was
16 reached in the MCI decision, which was a 13-515
17 complaint case to which no one else could be a
18 party. I believe, and you can correct me if I'm
19 wrong, I think the case is on appeal.

20 MR. BINNIG: It is on appeal. That's correct.

21 MS. HIGHTMAN: So I think, you know, ultimately
22 we'll see what the courts say about whether the

1 Commission's conclusion on that issue is correct, but
2 the bottom line here is I don't think it's necessary
3 or even appropriate in this docket to make a decision
4 as to what the impact of a later tariff, which isn't
5 even finalized yet, will be, where in this docket
6 we're entitled to arbitrate the issues that are
7 pending in this docket, and the agreement or at least
8 the testimony as I understand it from Staff, which
9 led to the supplemental verified statements, referred
10 to interim pricing, and I don't -- I didn't read it
11 to be referring to anything else being interim in
12 this docket other than pricing, and that's how --
13 what we addressed in our supplemental verified
14 statement.

15 As far as the Petitioners are concerned,
16 the issue of fiber-fed loops as a matter of policy is
17 something that has to be decided in these dockets,
18 but we understand that the terms and conditions based
19 on the Staff verified statements would be determined
20 later, if the policy decision goes the way we hope it
21 does.

22 So, you know, I'm not sure -- I think it's

1 premature and inappropriate for us to be making some
2 decision on what the impact of a tariff that's not
3 yet final would be on this case or on these
4 Petitioners.

5 MR. REED: In light of that, Staff would only
6 have this comment. To the extent the Commission will
7 be making a pronouncement with respect to the issues
8 that are raised between the two parties, it is
9 Staff's opinion that that pronouncement will be
10 limited to these two particular parties. The
11 Commission's overall, general overarching policy will
12 be enunciated in the general tariff wherein everyone
13 would have an opportunity to be heard and file
14 testimony.

15 EXAMINER WOODS: I just wonder if we couldn't
16 just put this to bed by getting the parties together
17 to agree on the insertion of a contract term, because
18 it doesn't sound like there's any disagreement. I
19 mean it sounds like that the parties are pretty much
20 on the same wavelength as far as the outcome of this
21 and the outcome of the tariff, and I just wonder if
22 there could be some contract term inserted into the

1 contract that would simply reflect that a agreement
2 that reflects the ongoing general tariff and what
3 terms and conditions are going to come out of that
4 that would apply once that's done.

5 MS. HIGHTMAN: Well, I would suggest that the
6 contract, and I'm talking about the permanent
7 contract, already reflects that through the change of
8 law provision.

9 The other thing I wanted to go off the
10 record to discuss.

11 MR. BINNIG: Okay.

12 EXAMINER WOODS: Well, I tend to agree that
13 there's no ruling necessary at this time. I think
14 predicting what the Commission will do in a future
15 docket and what impact the Commission would decide
16 that future docket would have on a particular
17 contract term is basically a crap shoot that I don't
18 feel like I could make any type of well reasoned
19 ruling at this time.

20 I will take a look at the Manual Order to
21 see if I think there's any distinction that might not
22 apply here. Upon reading that, we may wish to

1 revisit this before the end of the hearings.

2 MS. HIGHTMAN: And, again, I would note that it
3 is on appeal, so.

4 I don't want to interrupt you if you're not
5 done.

6 EXAMINER WOODS: I'm done.

7 MS. HIGHTMAN: There's one item I'd like to
8 address off the record, if we may.

9 EXAMINER WOODS: Okay.

10 (Whereupon at this point in
11 the proceedings an
12 off-the-record discussion
13 transpired.)

14 EXAMINER WOODS: Back on the record.

15 Ready, Mr. Reed?

16 MR. REED: Yes, Mr. Examiner. Staff would like
17 to call its first witness in this proceeding,
18 Mr. Christopher L. Graves, and the witness has
19 already been sworn.

20

21

22

1 CHRISTOPHER L. GRAVE
2 called as a witness on behalf of the Staff of the
3 Illinois Commerce Commission, having been first duly
4 sworn, was examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. REED:
7 Q. Would you please state your name, spelling
8 your last name for the record?
9 THE WITNESS:
10 A. Christopher L. Graves, G-R-A-V-E-S.
11 Q. By whom are you employed?
12 A. The Illinois Commerce Commission.
13 Q. What is your position with the Illinois
14 Commerce Commission?
15 A. I'm an Economic Analyst.
16 Q. You have before you a document that has
17 been designated as ICC Staff Exhibit 1.0 consisting
18 of a cover page and 13 pages of text in question and
19 answer form designated the Verified Statement of
20 Christopher L. Graves. Was this document prepared by
21 you or under your direction?
22 A. Yes, it was.

1 Q. Does this document constitute your
2 verified statement in this proceeding?

3 A. Yes, it does.

4 Q. Are there any changes which you would like
5 to make to this document?

6 A. No.

7 Q. If I were to ask you these same questions
8 today, would your answers be the same?

9 A. Yes, they would.

10 MR. REED: We now submit ICC Staff Exhibit 1.0
11 for admittance into the record and tender the
12 witness, Mr. Christopher L. Graves, for
13 cross-examination in this proceeding.

14 EXAMINER WOODS: Any objections? Staff Exhibit
15 1.0 is admitted without objection.

16 (Whereupon Staff Exhibit 1.0
17 was received into evidence.)

18 The witness is available for cross.

19 MR. BOWEN: I guess I'll begin, Your Honor.
20 Thank you.

21 EXAMINER WOODS: All right.

22

1 CROSS EXAMINATION

2 BY MR. BOWEN:

3 Q. Mr. Graves, my name is Steve Bowen. I'm
4 counsel for Rhythms. Good afternoon.

5 A. Good afternoon.

6 Q. Just a couple of questions on Staff
7 Exhibit 1. If you could turn with me to page 5 of
8 your verified statement.

9 A. Okay. I have that.

10 Q. Okay. That's where we'll start. I want
11 to ask you a couple questions, first of all. I
12 noticed that you have substantial economic education
13 and experience. Do you have any formal education in
14 telecommunications engineering?

15 A. No, I do not.

16 Q. Okay. What about experience in a job
17 setting for engineering type issues?

18 A. I've -- as for resolving engineering
19 issues, no. As for the policy of different
20 engineering arrangements, I have testified to that.

21 Q. Okay. That was my next question. It
22 seems to me that your testimony, as I read it, is

1 addressing policy issues. Is that a fair conclusion
2 to draw?

3 A. Yes, it is.

4 Q. Okay. Now on page 5 of your verified
5 statement, and the context here is Issue No. 1 that
6 you're testifying to here on lines 3 through 17, and
7 that issue, just so the record has a reference point,
8 is whether or not Ameritech should be required to
9 provide a menu of three different splitter
10 configurations for line sharing. Is that correct?

11 A. Yes.

12 Q. Okay, and your answer is that you don't
13 think the Commission can mandate where Ameritech
14 places its splitter equipment. Right? That's part
15 of your answer.

16 A. Yes.

17 Q. Okay. You're familiar with TELRIC, are
18 you not?

19 A. Yes, I am.

20 Q. What does that stand for, just for the
21 record?

22 A. Total element long-run incremental cost.

1 Q. Okay. And is it fair to say that that's
2 kind of a forward-looking, efficient economic costing
3 approach?

4 A. Yes, it is.

5 Q. Okay. Now I said efficient in my last
6 question. Does TELRIC have as one of its an
7 assumptions that whatever it is that you're trying to
8 cost out is going to be assumed to be deployed
9 efficiently?

10 A. Yes.

11 Q. Okay. Am I also correct that in the
12 actual world of deploying telecommunications
13 equipment, or allowing CLECs to deploy their own
14 equipment, that Ameritech has some or a lot of
15 discretion as to where that actually goes in the
16 central office?

17 A. They have discretion as to where the
18 collocation is and where virtual collocation items
19 are placed.

20 Q. Okay. Put another way, CLECs don't get to
21 decide where their stuff goes in the office. Is that
22 fair?

1 A. That's my understanding, yes.

2 Q. Okay. And is it possible that Ameritech
3 could mandate CLEC equipment placement in a location
4 that's fairly distant from say the main distribution
5 frame?

6 A. That's possible.

7 Q. Okay. Is it also possible that if you
8 think about the efficient TELRIC forward-looking
9 assumptions, that there can be somewhat of a
10 disconnect between the assumptions you use for
11 costing and pricing and the actual placement of
12 physical equipment in the central office?

13 A. Can you say that to me again?

14 Q. I can try it a different way. If you're
15 going to cost out, as an example, splitter placement,
16 for purposes of line sharing, and you're going to try
17 to comply with TELRIC as well, you'd want to try, I
18 take it from what you said, to use as your base
19 assumption an efficient configuration for splitter
20 placement. Is that fair?

21 A. That would be one of the things that you
22 would have to weigh. I think that there are also,

1 you know, ideas of efficient use of the existing
2 plant and where things will be placed inside of a
3 central office and where space is available inside a
4 central office.

5 Q. Well, for example, you wouldn't think it
6 would be a good idea -- you wouldn't think it would
7 be TELRIC compliant for Ameritech to say I think we
8 should cost splitter placement as though it's out in
9 the parking lot, a splitter.

10 A. No.

11 Q. Okay. Okay. I understand your testimony
12 there.

13 Now can you turn with me to page 8 of your
14 verified statement?

15 A. Okay. I have it.

16 Q. Now here you're talking about line sharing
17 on digital loop carrier systems, what Ms. Hightman
18 referred to as fiber-fed DLC systems, are you not?

19 A. Yes.

20 Q. And your interpretation of the FCC Order,
21 as you testify here, is that you believe that
22 Ameritech must provide line sharing on fiber-fed

1 loops unless it can demonstrate, to use your
2 language, that it is not technically feasible.
3 Correct?

4 A. That is my understanding, yes.

5 Q. Okay. Now if you were to become aware of
6 representations by Ameritech itself that line sharing
7 on fiber-fed DLC systems is, in fact, feasible, would
8 you believe that that representation would satisfy
9 this particular standard?

10 A. If --

11 Q. I'll simplify it. If Ameritech said I'm
12 willing to offer you line sharing on fiber-fed DLC
13 systems, would that, in your view, satisfy the test
14 of being technically feasible?

15 A. Yes, it would.

16 Q. Okay. Could you just flip back now to
17 page 10, please? Actually it's 10 and 11. This is
18 the issue of Issue 13, whether or not Ameritech
19 should be allowed to charge for de-conditioning of a
20 loop. Do you see that there?

21 A. Yes, I do.

22 Q. Now I'm interpreting your testimony here

1 to recommend that the prices ought to be determined
2 for conditioning in the special construction tariff
3 docket. Is that right?

4 A. The interim prices.

5 Q. Okay. That's what I wasn't quite clear
6 on. Can you tell me whether -- and look at page 11
7 with me. You have a bunch of conditioning prices
8 there. Those I think are from Texas. Is that
9 right?

10 A. That's correct.

11 Q. And your testimony on page 10 says that in
12 the special construction tariff case, you proposed
13 those Texas rates as the interim rates. I guess what
14 I want to clarify with you here in this docket is,
15 are those your recommended conditioning charges for
16 this line sharing case on an interim basis as well?

17 A. Yes. Those are the interim rates that I'm
18 proposing.

19 Q. Okay. And then what about whether those
20 would be trued up or not? What's Staff's
21 recommendation on that point?

22 A. I think that there's a requirement for

1 those to be trued up.

2 MR. BOWEN: Okay. That's all I have. Thank you
3 very much.

4 Thank you, Your Honor.

5 EXAMINER WOODS: What's the source of that
6 requirement?

7 THE WITNESS: The SBC/Ameritech merger. It's
8 the Condition 6 of Appendix C that I reference in my
9 testimony.

10 EXAMINER WOODS: Okay.

11 Ms. Feinberg.

12 MS. FRANCO-FEINBERG: Thank you.

13 CROSS EXAMINATION

14 BY MS. FRANCO-FEINBERG:

15 Q. Good afternoon, Mr. Graves. My name is
16 Felicia Franco-Feinberg. I'm here representing Covad
17 Communications. How are you today?

18 A. Good.

19 Q. Good. I have just a few questions to
20 follow up on Mr. Bowen's questions. It should only
21 take a moment.

22 You indicated that you're here testifying

1 on policy issues. Is that correct?

2 A. That's correct.

3 Q. So your testimony doesn't address at all
4 what's technically feasible. Is that correct?

5 A. That's correct.

6 Q. Okay. And isn't it correct that the
7 nature of equipment may affect where it's placed in a
8 central office?

9 A. Can you say that -- I think I missed a
10 word.

11 Q. Sure. I'll just repeat it. If not, you
12 need it clarified, I will.

13 Isn't it correct that the nature of
14 equipment may affect where it's placed in the central
15 office?

16 A. Yes.

17 Q. And if there's a more efficient network
18 available and a less efficient network available and
19 Ameritech chooses the less efficient network option,
20 would you agree that a CLEC should not pay more --
21 should not have to pay more than the cost of the
22 efficient network? I know that was long. Do you

1 need me to repeat that? There were several steps
2 there.

3 A. As I understand it, there are several
4 issues to weigh as far as what the efficient network
5 is as far as what's currently available and what's in
6 place, and to say --

7 Q. I'm not asking -- I guess just to clarify,
8 and I didn't mean to cut you off, I'm not asking
9 what, in fact, the most efficient network is. I know
10 that's a determination that will be made here. I'm
11 saying let's assume that there is an efficient
12 network option and a less efficient network option.
13 Would you agree that the CLEC should not have to pay
14 more than the costs of the efficient network,
15 whatever that efficient network is determined to be?

16 A. That's the TELRIC principle is that you
17 base the costs of the service on the most efficient
18 network.

19 Q. Okay. So you would agree then.

20 A. Yes.

21 MS. FRANCO-FEINBERG: Thank you. That's all I
22 have. I appreciate it.

1 CROSS EXAMINATION

2 BY MR. BINNIG:

3 Q. Good afternoon, Mr. Graves.

4 A. Good afternoon.

5 Q. Now I take it it's your understanding that
6 this proceeding is an arbitration pursuant to Section
7 252 of the Federal Telecommunications Act of 1996?

8 A. That's my understanding.

9 Q. So I take it it's also your understanding
10 that under Section 252(c) of the '96 Act that this
11 Commission, in resolving any open issues in this
12 arbitration, must meet the requirements of Section
13 251 of the Act and any applicable FCC regulations?

14 MR. BOWEN: Your Honor, I'm not sure if counsel
15 is calling for a legal conclusion or not.

16 MR. BINNIG: No. I'm asking for his
17 understanding.

18 MR. BOWEN: Okay.

19 MR. BINNIG: That's exactly what I asked for,
20 and if it would help, I can give you a copy of
21 Section 251(c).

22 MR. REED: And next time maybe, Mr. Bowen, if

1 you'd let me take care of my witness, I'd appreciate
2 that.

3 MR. BOWEN: Certainly.

4 MR. REED: Mr. Binnig and I have an
5 understanding clearly he's not asking for a legal
6 interpretation, and if you'll allow me the latitude
7 to represent my client, I'll allow you to do the same
8 when you put yours up. How's that?

9 MR. BOWEN: That would be fine.

10 MR. REED: Outstanding.

11 MS. HIGHTMAN: Chris, what was your cite again?

12 MR. BINNIG: 251 -- actually I misspoke. It's
13 252(c).

14 EXAMINER WOODS: No wonder he didn't understand.

15 MR. BINNIG: It's called Standards for
16 Arbitration, and I'll give you a copy of it.

17 (Whereupon said document was
18 provided to the witness by
19 Mr. Binnig.)

20 Q. And Section 252(c) sets out the standards
21 for arbitration. Is that right? Is that your
22 understanding, Mr. Graves?

1 A. That's my understanding from looking at
2 this.

3 Q. And is it your understanding that in
4 resolving open issues in this arbitration, the
5 Commission must meet the requirements of Section 251
6 of the Act and any applicable FCC regulations?

7 A. Under section (c), subpart (1), it states:
8 "Ensure that such resolution of conditions meet the
9 requirements of Section 251, including the
10 regulations prescribed by the Commission pursuant to
11 Section 251."

12 Q. And, in addition, it also provides that
13 the state Commission shall, and in subsection (2)
14 there, (c)(2), establish any rates for
15 interconnection, services, or network elements
16 according to subsection (d). Do you see that?

17 A. Which section?

18 Q. Subsection (c)(2).

19 A. Okay. Yes, I see that.

20 Q. And it's your understanding that this
21 proceeding involves, in part, rates for network
22 elements, for a network element known as the high

1 frequency portion of the loop. Is that correct?

2 A. That's my understanding.

3 Q. Why don't we now turn to your testimony at
4 page 5, and I'm interested in the Q and A's, two Q
5 and A's that begin on line 8 on page 5, carrying over
6 to line 2 on page 6, and my first question with
7 respect to this issue, which is Issue 1, which is the
8 menu of splitter configurations that Rhythms and
9 Covad are seeking in this arbitration, have you
10 reviewed the interim arbitration award for line
11 sharing issued in Texas?

12 A. No, I haven't.

13 Q. Even though you haven't reviewed it, are
14 you aware that the Texas interim award rejected Covad
15 and Rhythms' request for a menu of three splitter
16 configurations?

17 A. I wasn't aware of that.

18 Q. Have you reviewed the Final Arbitrator's
19 Report in the California line sharing arbitration
20 involving Rhythms and Covad?

21 A. I did review the arbitrator's award in the
22 California case, but I'm not sure if that was the

1 final order.

2 Q. The award that you reviewed from
3 California, did that award also reject Covad and
4 Rhythms request for a menu of three splitter
5 configurations?

6 A. It's my recollection that it did.

7 Q. It did reject that request?

8 A. As I recollect it.

9 Q. Just so I can refresh your recollection
10 here, let me give you a copy of the Final
11 Arbitrator's Report from California, and if you look
12 at page 19 of this report, is there a sentence that
13 reads, and I quote, "While a menu of choices may be
14 optimal from the point of view of CLECs, it is
15 neither required by the FCC nor is it reasonable"?

16 A. That sentence is definitely in there.

17 Q. Is that consistent with your recollection
18 of the arbitration award that you reviewed?

19 A. Yes.

20 Q. And are you familiar with the D.C .
21 Circuit's recent appellate decision in the appeal of
22 the FCC's collocation order? I think it's called the

1 GTE case.

2 A. You'd have to show it to me.

3 Q. Show you a copy?

4 EXAMINER WOODS: Do you have a cite?

5 MR. BINNIG: Yeah. Let me grab it real quick
6 here.

7 I may not have my copy with me, in which
8 case I'll give you a cite tomorrow.

9 EXAMINER WOODS: Okay.

10 MR. BINNIG:

11 Q. Let me ask you this question, Mr. Graves.
12 Are you aware that the D.C. Circuit recently threw
13 out some of the FCC's collocation rules?

14 A. I know that they've ruled on it. You
15 know, as far as what exactly they've done, I'm not
16 aware of all the detail.

17 Q. So you're not aware of whether one of the
18 things they threw out were rules that allowed the
19 collocater to collocate his equipment in any unused
20 space within the central office of the incumbent?

21 A. I am aware that that language was cited to
22 in the California arbitration award.

1 Q. And you don't have any reason to believe
2 that the California arbitration award miscited or
3 misquoted that opinion, do you?

4 A. I don't have any reason to believe that
5 they miscited it. I think that the intervenors have
6 raised other issues that could go to, you know,
7 noncompetitive behavior that this Commission should
8 definitely look at.

9 MR. BINNIG: And, Your Honor, I do have a cite.
10 It's GTE Services Corporation, et al., v. FCC, 205
11 F.3rd 416.

12 EXAMINER WOODS: Is there a docket number on
13 that by any chance?

14 MR. BINNIG: I don't have it here in this cite.

15 EXAMINER WOODS: Could you provide that?

16 MR. BINNIG: (Nods head up and down.)

17 Q. And I take it you've reviewed the line
18 sharing order, Mr. Graves, the FCC's Line Sharing
19 Order?

20 A. Yes, I have.

21 Q. I don't know if you have a copy up there
22 or portions of a copy up there, but do you have a

1 copy of paragraph 76 of the FCC's Line Sharing
2 Order?

3 A. Is that the paragraph titled Control of
4 the Loop and Splitter Functionality?

5 Q. Yes, that's the correct paragraph.

6 A. I have it.

7 Q. So you are aware that the FCC has said
8 that incumbent LECs may maintain control over the
9 loop and splitter equipment and functions?

10 (Pause in the proceedings.)

11 A. Can you restate your question?

12 Q. I take it you are aware that the FCC in
13 that paragraph said that incumbent LECs may maintain
14 control over the loop and splitter equipment and
15 functions.

16 A. Yes.

17 Q. And would you agree with me that a fair
18 reading of that statement is that the FCC allows but
19 does not require ILECs to own splitters?

20 A. That's my understanding.

21 Q. And, by the way, Mr. Graves, the FCC
22 hasn't defined a splitter as an unbundled network

1 element, has it?

2 A. I'd have to check.

3 Q. Why don't we --

4 A. Because --

5 Q. Excuse me. Go ahead.

6 A. -- in my understanding a splitter was part
7 of the way that you accessed the unbundled element,
8 so I'm not clear on where you actually split the
9 baby.

10 Q. Do you have Appendix B to the FCC's Line
11 Sharing Order which sets out the actual rules that
12 the FCC adopted? And I'm in particular going to
13 point you to Section 561.319, paragraph (h).

14 A. I do not have the appendix with me. You
15 said Appendix B?

16 Q. It's Appendix B to the Line Sharing
17 Order.

18 A. Okay. I do have that.

19 Q. Okay. If you could look at the specific
20 rule that was added to the section of specific
21 unbundling requirements, Section 51.319, paragraph
22 (h). Do you see that?

1 A. I don't have that here. If you could give
2 me a copy.

3 Q. Let me give you a copy.

4 (Whereupon said document was
5 provided to the witness by
6 Mr. Binnig.)

7 If you look near the bottom of the first
8 page of Appendix B, you'll see that they're adding --
9 the FCC has added a paragraph 8 to Section 51.319,
10 which is the section of the FCC's rules that provides
11 for the specific UNEs that have to be unbundled.

12 A. Uh-huh.

13 Q. And subsection (8) is titled High
14 Frequency Portion of the Loop. Is that right?

15 A. Yes.

16 Q. And it's defined in subsection (h)(1) is
17 as follows: "The high frequency portion of the loop
18 network element is defined as the frequency range
19 above the voice band on a copper loop facility that
20 is being used to carry analog circuit-switched voice
21 band transmission."

22 A. That's what this says.

1 Q. Okay. So would you agree with me that
2 that is how the FCC has defined the high frequency
3 portion of the loop UNE?

4 A. That's how it appears.

5 Q. If you want to hold on to that, I don't
6 think I'm going to be referring to it again, but you
7 can just give it to me after I'm done.

8 Why don't we -- let's move on to your
9 testimony now on Issue 2. Okay?

10 A. Yes.

11 Q. And this testimony begins on page 6, line
12 4.

13 A. I have it.

14 Q. And the issue here is in the instances
15 where Ameritech Illinois makes sort of the volunteer
16 decision to provide access to the HFPL using a
17 splitter that Ameritech Illinois owns, whether that
18 should be provisioned a line at a time or a shelf at
19 a time. Is that your understanding of the issue?

20 A. That's my understanding.

21 Q. And it's your understanding, isn't it,
22 that SBC/Ameritech takes the position that where it

1 volunteers to provide the high frequency portion of
2 the loop UNE using splitters that it owns and
3 Ameritech Illinois owns, that it will provide those a
4 line at a time?

5 A. That's my understanding of their
6 position.

7 Q. Okay. And Covad and Rhythms, in addition
8 to wanting that access a line at a time where
9 Ameritech Illinois owns the splitter, they also want
10 Ameritech Illinois to be required to provide them
11 access a shelf at a time as well.

12 A. That's my understanding.

13 Q. Now the arbitrator's report that you
14 reviewed from California, are you aware that that
15 report rejected Covad and Rhythms' request that
16 PacBell be required to provide splitters that PacBell
17 owns a shelf at a time?

18 A. I am aware of that, but that's why we have
19 arbitrations here.

20 Q. Are you aware that the Texas interim
21 arbitration award also rejects Covad and Rhythms'
22 request for getting access to the ILEC-owned splitter

1 a shelf at a time?

2 A. I'm not aware of what happened in Texas.

3 EXAMINER WOODS: Were those both interim?

4 MR. BINNIG: Yes.

5 Q. And I believe you're recommending in this
6 arbitration that Ameritech Illinois be required to
7 provide access to splitters where it owns the
8 splitter a shelf at a time in addition to a line at a
9 time. Is that correct?

10 A. That's my recommendation, yes.

11 Q. Okay. I want to ask you a couple
12 questions related to that recommendation. Wouldn't
13 you agree, Mr. Graves, that CLECs who are interested
14 in line sharing, such as Covad and Rhythms, have
15 options to get the HFPL UNE, high frequency portion
16 of the loop UNE, using their own splitters as opposed
17 to using splitters that Ameritech Illinois might
18 voluntarily provide?

19 A. It's my understanding that Rhythms, for
20 example, owns its own splitters.

21 Q. So those CLECs have other options besides
22 just buying access to an ILEC-owned splitter. They

1 can provide -- get access to the HFPL by providing
2 their own splitter.

3 A. That's my understanding.

4 Q. And if they do, they own the splitter,
5 then, of course, they can use it a shelf at a time if
6 they want. It's their own splitter. Isn't that
7 correct?

8 A. That's my understanding.

9 Q. Okay.

10 Now let's take the situation where it's an
11 Ameritech Illinois-owned splitter. Okay? And I want
12 you to assume that we have a number of CLECs
13 interested in line sharing. We have a number of
14 CLECs who are interested in using, getting access to
15 a splitter that Ameritech Illinois owns and
16 volunteers to provide access to. Okay? And we can
17 use any number we want, five, ten, fifteen, but let's
18 just assume it's a multiple numbers of CLECs who are
19 interested in that option.

20 A. Okay.

21 Q. Okay?

22 A. Okay.

1 Q. Would you agree with me that allowing a
2 CLEC to reserve an entire shelf when other CLECs
3 desire access to that same shelf could be
4 anti-competitive? That it could keep out the other
5 CLEC competitors?

6 A. I would only see that as anti-competitive
7 if the number of splitters was a finite amount and
8 that no more splitters could be provisioned.

9 Q. Well, are --

10 A. I understand that in the case that I laid
11 out that Ameritech would be compensated for all that
12 space. They would pay the opportunity cost for using
13 that splitter capacity, so they would be incented to
14 provide the service because they're paying for a
15 significant portion of them.

16 Q. I'm not focusing on the impact on
17 Ameritech Illinois right now. I'm focusing on the
18 impact on other CLECs who are interested in providing
19 line sharing, perhaps other CLECs in competition with
20 Covad and Rhythms. Okay? If, in fact, splitters
21 were a finite resource in the sense that let's say
22 currently, right now, the demand for splitters

1 exceeds the supply of splitters that are available.
2 If that were the case, couldn't a requirement that
3 Ameritech Illinois would have to provide splitters
4 that it owned a shelf at a time instead of a line at
5 a time preclude competitive CLECs from getting access
6 to that splitter? That is the first CLEC could
7 reserve the entire shelf. Other CLECs would no
8 longer have access to that shelf.

9 A. That's my understanding is that if --
10 Ameritech can't charge two people for using the same
11 splitter port on the same line. It wouldn't work.

12 Q. I'm talking about physical access to that
13 splitter. If one CLEC has reserved the entire
14 splitter for its own use, then that splitter is not
15 available for use by any other CLEC; that shelf is
16 not available for use by any other CLEC. Isn't that
17 correct?

18 A. That would be correct, because in the
19 ordering process that line would be shown as already
20 ordered.

21 Q. In the case --

22 A. And it would be hard-wired to the CLEC's

1 equipment.

2 Q. In the case of a line-at-a-time approach
3 that Ameritech Illinois advocates, isn't it possible
4 that 96 different CLECs could have access to the same
5 shelf, each one buying a single DSL line?

6 A. I think that's fully possible.

7 Q. Now Mr. Bowen asked you some questions
8 earlier where I think you indicated that you don't
9 have any engineering degree. You've never had
10 responsibility for what I would call central office
11 engineering issues. Is that right?

12 A. That's correct.

13 Q. Okay. With respect to your -- I'm looking
14 at page 7 of your testimony and your question and
15 answer beginning at line 5 going through line 12, and
16 you're addressing here the issue of frame exhaust.

17 A. That's correct.

18 Q. Are you aware, Mr. Graves, that the only
19 blocks that exist on Ameritech Illinois' main
20 distribution frames today are connection blocks, not
21 equipment blocks?

22 A. Can you make -- can you tell me the

1 distinction between an equipment block and a
2 connection block?

3 Q. Do you know -- I guess my question will be
4 the foundational question. Do you understand that
5 there is a connection block which is used to connect
6 jumpers on the MDF?

7 A. I understand that.

8 Q. Do you also understand that that item is
9 something distinct from equipment blocks, such as
10 splitters?

11 A. If you're saying that, you know, -- if
12 you're defining an equipment block as a splitter,
13 yes, I understand that there are currently no
14 splitters attached to the MDF.

15 Q. And you don't have -- other than just what
16 I characterize as an equipment block, a splitter, you
17 don't have an understanding of whether other types of
18 equipment blocks exist, do you?

19 A. It's my understanding, main distribution
20 frames, that you don't put equipment on to the main
21 distribution frame. Those are simply blocks used to
22 cross connect wires.

1 Q. And one of the things you point out in
2 your answer here on line 6 is that shelf-at-a-time
3 provisioning, you say it could lead to a faster
4 exhaust of the frame. Do you see that? It's line
5 6.

6 MS. HIGHTMAN: What page are you on?

7 MR. BINNIG: I'm on page 7, line 6.

8 MR. BOWEN: Your Honor, just for the record, I
9 quoted pages in my cross-examination from a printout
10 from the electronic version of this, and it appears
11 that my pages are different than counsel's for
12 Ameritech. So just for the record, my pages were
13 based on the printout of the e-version.

14 MR. BINNIG: We may -- I don't know how you want
15 to deal with that. We may want to have both versions
16 ultimately put in the record because I'm using a hard
17 copy version.

18 MS. HIGHTMAN: I am using the printout.

19 MS. FRANCO-FEINBERG: I'm using the electronic
20 as well.

21 MR. REED: The Commission's Rules of Practice
22 state, Mr. Binnig, that it is the electronic version

1 that is the official version that will be entered
2 into the record. To the extent that one wants to use
3 that document during cross-examination, it would
4 behoove them to download the electronic version as
5 the official version.

6 MR. BINNIG: In that case, just so the record is
7 clear, since I'm using the hard copy version, should
8 we put that into the record as well?

9 EXAMINER WOODS: I think as long as you argue in
10 brief off of the electronic version, we'll be fine.

11 MR. BINNIG: Okay.

12 MS. HIGHTMAN: Just so I know where you are,
13 could you just tell me what you're referring to? My
14 lines don't match.

15 MR. BINNIG: This is the first answer, the first
16 line of the answer to the question: "Would
17 shelf-at-a-time provisioning lead to a faster exhaust
18 of the frames?"

19 MS. HIGHTMAN: Okay. Thank you.

20 Q. And you state there that it could lead to
21 a faster exhaust of the frames. Is that right?

22 A. Yes, I do.

1 Q. And I take it you reach that conclusion
2 because a shelf-at-a-time provisioning requires the
3 placement of more blocks on the main distribution
4 frame than line-at-a-time provisioning does?

5 A. Well, this is somewhat complicated in that
6 there are actually fewer blocks on the intermediate
7 distribution frame because there's -- because you
8 wire things from the splitter to the DSLAM directly
9 and avoid putting extra blocks on the intermediate
10 distribution frame to connect the intermediate
11 distribution frame to the splitter and from the
12 intermediate distribution frame to the DSLAM.

13 Q. My question focused on the main
14 distribution frame, or MDF.

15 A. Okay.

16 Q. And I think your answer was there would be
17 more blocks on the MDF. Is that correct?

18 A. Yes.

19 Q. And you've been in a central office
20 before, so you've seen an MDF I take it.

21 A. I've been in several, yes.

22 Q. You would agree that an MDF is not

1 something that you can easily move.

2 A. It's not my understanding that it's moved
3 easily, but I think that there's a fair amount of
4 engineering that goes into putting those in so that
5 you can expand them.

6 Q. Okay. But you'll agree within any central
7 office of a finite size, the ability to expand is
8 limited.

9 A. That's certainly true, but , you know,
10 there's definitely room to expand in most of the
11 central offices that I've been in.

12 Q. Okay. And which central offices in
13 particular have you been in?

14 A. I've been to the Lakeview Central Office
15 by Wrigley Field. I've been in the Springfield Main
16 Central Office. I've been in the Springfield West
17 Central Office, and I've been in the Franklin Central
18 Office.

19 Q. With respect to those four offices, isn't
20 it true in each case that the MDF is located directly
21 above what's known as the cable vault?

22 A. I'm not certain that that's true in all

1 cases.

2 Q. I'm talking about the four offices that
3 you've been to.

4 A. Right.

5 Q. I know Ameritech has I think about 500
6 central offices in Illinois, but the four you've been
7 to.

8 A. And, for example, in the Franklin Central
9 Office the cable vault is in the basement.

10 Q. Correct.

11 A. And I believe the MDF is on the second or
12 third floor.

13 Q. But it's above the cable vault, directly
14 above the cable vault.

15 A. That's correct.

16 Q. And would you agree with me that the
17 reason that MDFs are placed directly above the cable
18 vault is to minimize the length of runs from the
19 cable vault up to the MDF?

20 A. That's my understanding.

21 Q. Now you also quote I think on page --
22 again, I'm looking at the hard copy version, but on

1 page 4 of your testimony, this is in response to the
2 question what are the essential elements used to
3 provide line sharing, and you quote from Newton's
4 Telecom Dictionary an explanation of what a
5 distribution frame is. Do you see that?

6 A. Yes.

7 Q. And you see the last sentence states :
8 "Designing distribution frames and their layout in
9 advance is critical, otherwise it becomes a mess and
10 tracing where jumpers wires go becomes an enormously
11 time-consuming job." Do you see that?

12 A. I see that.

13 Q. Now in designing not only the layout of
14 the MDF but the layout of the central office in
15 total, would you agree that a network engineer should
16 consider all uses of that central office?

17 A. I would assume that he would take into
18 account all the relevant uses of the central office
19 when designing.

20 Q. So if a number of services were being
21 provided from that central office and if there were
22 collocators that were providing a number of different

1 services out of that central office, you would agree
2 that it would not be reasonable for an engineer to
3 design that office solely to maximize efficiency for
4 DSL service providers. That is, you don't maximize
5 the configuration -- you don't plan a configuration
6 to maximize the efficiency of a single service.

7 A. That's my understanding that you don't
8 engineer to just one service, but I think that you
9 could probably take into account different services
10 and their needs, and I think that it's been shown
11 that DSL has a very distance-sensitive need.

12 Q. Why don't we move on to Issue No. 7 of
13 your testimony, and the first question and answer
14 under Issue No. 7, the question is what does the FCC
15 Line Sharing Order say regarding this issue, and you
16 quote from the Line Sharing Order.

17 A. Yes.

18 Q. I'd like to go to those provisions in the
19 Line Sharing Order.

20 A. Okay.

21 Q. And I'm not sure that you have cited the
22 actual paragraphs of the Line Sharing Order, but

1 isn't it paragraphs 91 and 92?

2 A. Yes. I did cite it on page 9, if you look
3 at the footnote.

4 Q. Page 9, mine says -- oh, mine shows up on
5 page 10. Okay.

6 If I can have a second, Your Honor, I'm
7 going to set up this easel.

8 MR. BOWEN: Warning, lawyer installation.

9 (Laughter)

10 MR. BINNIG: You don't want me installing any
11 tie cables.

12 MR. BOWEN: It's not straight.

13 MS. HIGHTMAN: It doesn't look right to me. I
14 object.

15 (Laughter)

16 MR. BINNIG: I think it will work for the
17 purposes that I need it for.

18 Q. Now you'll recall my earlier question to
19 you that the -- we read this out of 51.319(h),
20 Appendix B, that the FCC defines the high frequency
21 portion of the loop network element as the frequency
22 range above the voice band on a copper loop

1 facility. Do you recall that?

2 A. Yes.

3 Q. Okay. I'm going to sort of draw, because
4 I think it helps to look at pictures, at least it
5 does for me, sort of a simplified version of a
6 network that has fiber-fed loops. Okay? And we'll
7 call this the central office, and I'm a horrible
8 drawer, but.

9 So we've got our switching here. Okay.

10 And I want to assume a case -- first I want to assume
11 a case where we have an all copper loop. Okay? So
12 we have coming out of the central office, ultimately
13 it goes to the MDF, but we have the feeder, right?
14 Often called the F1, and then there's usually some
15 type of pedestal or box for the distribution, often
16 called the F2. Then ultimately there's the drop to
17 the customer's premises.

18 MR. BOWEN: Your Honor, this is not an
19 objection, just for Mr. Reed's sake. I just can't
20 see. I'm at the counsel table, and I can't see the
21 drawing. Do you have maybe a magic marker or
22 something besides a pen that you could draw with?

1 MR. BINNIG: Let's see if we can find one. I
2 can draw very heavily.

3 I'm going to call this All Copper Loop.

4 Q. Now I've just drawn up this simplified
5 version, but is this consistent, Mr. Graves, with
6 your general understanding of what an all copper loop
7 looks like?

8 A. It basically is.

9 Q. Okay. And in the instance where a CLEC
10 wants to provide DSL service through line sharing and
11 you've got a copper loop, it normally accesses the
12 loop here in the central office. Is that correct?

13 A. Right, off of the MDF.

14 Q. Okay. Now would you agree that the FCC's
15 rules also suggest that if it wanted to, it could
16 access a portion of the loop, that is a subloop, of
17 this all copper loop at an accessible terminal in the
18 outside plant?

19 A. That's my understanding.

20 Q. And one of those accessible terminals
21 might be, for example, this pedestal between the
22 feeder and the distribution?

1 A. There are several access points.

2 Q. That might be one of them though?

3 A. Yes.

4 Q. And another one might be the interface

5 point between the distribution and the drop?

6 A. That could be another.

7 Q. Okay. Now let's go to a second scenario.

8 MR. REED: There's a marker up there for you

9 from one of your people.

10 MR. BINNIG: Even better.

11 MR. REED: I guess I just have a fundamental

12 question. Is this anywhere in one of their witness's

13 testimony? And I'm just asking. Is this --

14 MR. BINNIG: I'm getting to a point here.

15 MR. REED: But that wasn't the question I

16 asked. Is it in anybody's testimony?

17 MR. BINNIG: I don't believe.

18 MR. REED: Okay.

19 MR. BINNIG: If it was --

20 MR. REED: Then I'm sure I would have saw it.

21 A. I do believe that Ms. Murray had a picture

22 of a digital loop carrier configuration in her

1 testimony.

2 Q. That one is probably a little too complex
3 for what I'm trying to accomplish here, so.

4 Okay. Now the second example I want to
5 give here is a fiber-fed loop, and we've got the ILEC
6 central office again, the switch, and let's assume
7 that what comes out of the office, and I'm not going
8 to put in the various frames and things like that,
9 but what comes out is fiber. Okay? And that fiber
10 runs to a remote terminal. Then out of the remote
11 terminal we have the copper drop. Is it your
12 understanding, Mr. Graves, that at least this is the
13 way some, and I understand this is very simplified,
14 but this is the way some fiber-fed loops are
15 generally provisioned? That is you've got fiber out
16 to a remote terminal and then the copper drop going
17 to the customer premise?

18 A. It works much the same way as your copper
19 diagram, but instead of the copper going to the MDF,
20 it will go -- the fiber will go directly to the
21 switch, and it will go out to a distribution point.
22 That distribution point could be your remote

1 terminal; it could be a vault, a cabinet.

2 Q. And the only portion of this loop which is
3 copper is the drop portion here from the remote
4 terminal or distribution point. Isn't that right?

5 A. In this diagram with the -- yes, that's
6 correct.

7 Q. Okay. Now let's go back to paragraphs 91
8 and 92, and look at paragraph 91, Mr. Graves. In the
9 second sentence there, okay, after the first sentence
10 the FCC says, "We conclude that incumbents must
11 provide unbundled access to the high frequency
12 portion of the loop at the remote terminal as well as
13 the central office." Okay? They then say, "Our
14 subloop unbundling rules and presumptions allow
15 requesting carriers to access copper wire relatively
16 close to the subscriber, which is critical for a
17 competitive carrier to offer services using xDSL
18 technology over the high frequency network element."
19 Do you see that in the FCC's discussion in paragraph
20 91?

21 A. Yes.

22 Q. Isn't what the FCC is talking about there

1 is unbundling the subloop from the remote terminal or
2 the distribution point to the customer's premises?

3 (Pause in the proceedings.)

4 A. I think what they're talking about is that
5 you need to provide some sort of access to the
6 subloop, which would be the fiber that goes from the
7 central office to the remote terminal and also to the
8 remote terminal where you can place splitter
9 equipment and access the high frequency portion of
10 the loop.

11 Q. Well, let's go down to paragraph 92.
12 Okay? And I think this is the language that you rely
13 on for your belief that Ameritech has a burden to
14 establish that it's technically infeasible not to
15 unbundle this fiber piece. Is that right?

16 A. Yes.

17 Q. Let me read that sentence to you. It
18 states: "Where the parties are unable to forge --
19 let's go back. Okay?

20 They start off by saying, "We, therefore,
21 apply the same rebuttable presumption that we
22 established in the Local Competition Third Report and

1 Order" -- that's also referred to as the UNE Remand
2 Order. Is that right?

3 A. Yes.

4 Q. That for carriers requesting unbundled
5 access to the high frequency portion of the loop, the
6 subloop can be unbundled at any accessible terminal
7 in the outside loop plant." Isn't that what they
8 say? Do you see that?

9 A. Yes.

10 Q. Do you agree that the central office is
11 not part of the outside loop plant?

12 A. That's correct.

13 Q. Okay. Now let's go to the next sentence
14 where it says, "where Parties are unable to forge an
15 agreement to facilitate line sharing where the
16 customer is served by a loop passing through a DLC,
17 the incumbent carrier bears the burden of
18 demonstrating to the relevant state commission, in
19 the course of a Section 252 proceeding, that it is
20 not technically feasible to unbundle the subloop to
21 provide access to the high frequency portion of the
22 loop." Is that what they said?

1 A. That's what this language says.

2 Q. And isn't what the FCC is talking about
3 here is a subloop running from that outside plant
4 terminal to the customer prem?

5 A. It's talking about access to the subloop,
6 so if you were, you know, -- and I haven't seen any
7 language for prices for the subloop and terms for how
8 you would access the remote terminal or cabinet to
9 hook up that line sharing arrangement, so, you know,
10 it's pretty much worthless to have line sharing from
11 the remote terminal to the customer if you have no
12 way to connect your location to the remote terminal.

13 Q. Okay. But I'm asking about what the FCC
14 is talking about in these two paragraphs, and would
15 you agree with me, Mr. Graves, that certainly a
16 possible reading, if not the right reading, is that
17 the FCC is merely saying that in a fiber-fed loop
18 situation you have to give access to the copper
19 portion of that loop at an outside plant terminal,
20 and that if you can't do it, it's your burden to
21 prove that it's technically infeasible to do it?
22 Isn't that a possible reading of paragraphs 91 and

1 92?

2 A. That's a possible reading, but, as I said,
3 you know, in my reading, to allow -- to simply say
4 that, you know, the copper -- just allow -- just
5 require access to the copper portion when the rest of
6 it is fed by fiber is fairly useless.

7 Q. Would you agree that the FCC's subloop
8 unbundling rules in the UNE Remand Order require only
9 that access be provided to a subloop at accessible
10 terminals in the outside plant?

11 A. I think I already stated in my testimony,
12 I think that they required access to those customers
13 that are served by the digital loop carriers that are
14 over fiber.

15 Q. My question was with respect to the
16 subloop unbundling rules that the FCC issued.

17 A. Are you looking for the ones that you left
18 with me?

19 Q. No. That's the Line Sharing Order. I'm
20 talking about the subloop unbundling rules in the UNE
21 Remand Order. I don't have those with me, so.

22 Are you familiar with the subloop

1 unbundling rules in the UNE Remand Order?

2 A. I've read them. I'm not confident that I
3 could say thoroughly.

4 Q. Well, they'll say what they say, but is it
5 your recollection that they provide that an incumbent
6 is only required to provide access to subloops at
7 accessible terminals in the outside plant?

8 MR. REED: Mr. Examiner, that question has
9 already been asked and answered, probably not to the
10 satisfaction of Mr. Binnig, but the witness has
11 already given his understanding of what the FCC's
12 rules say. Now if he wants to sit up here all day, I
13 can do that, but he's going to get the same answer he
14 has already gotten. The question has been asked, and
15 it has been answered.

16 MR. BINNIG: If I may respond, it's my last -- I
17 think it's my last question, but I believe the
18 witness was giving his interpretation of paragraphs
19 91 and 92 of the Line Sharing Order. My question
20 goes to the FCC's subloop unbundling rules, which it
21 issued as part of its UNE Remand Order.

22 EXAMINER WOODS: What's the relevance of the

1 subloop unbundling rules to this docket?

2 MR. BINNIG: Well, those are the ones that -- if
3 you read paragraphs 91 and 92, those are the rules
4 that they apply. They say we adopt the same
5 rebuttable presumption from our subloop unbundling
6 rules.

7 EXAMINER WOODS: You can answer.

8 MR. BINNIG: And if you don't recall, that's
9 fine too.

10 A. And I've forgotten what the question is.

11 MR. BINNIG: I'll move on.

12 Q. Are you aware that the California
13 arbitrator's award that you reviewed concluded that
14 line sharing over fiber-fed loops was not addressed
15 or required by the FCC's Line Sharing Order?

16 A. I don't remember that specifically. If
17 you have something that you'd like to point to.

18 Q. I'll show you again the copy of the Final
19 Arbitrator's Report. I believe Issue 3 is entitled
20 Must ILECs Allow CLECs to Use Line Sharing on Loops
21 that Traverse Fiber-fed Digital Loop Carrier, DLC
22 Systems, Including Loops Deployed by Pacific, Pacific

1 Bell, Under Its Project Pronto as a Result of this
2 Proceeding? And does the arbitrator conclude there
3 in the second sentence that ILECs are correct that
4 line sharing, pursuant to the FCC Line Sharing Order,
5 is on the copper loop?

6 A. And where are you?

7 Q. Second sentence from the end of the
8 arbitrator's decision under Section 6.3.

9 A. That appears to be their decision.

10 MR. BINNIG: Okay. If I could have just one
11 second, Your Honor.

12 (Brief pause in the proceedings.)

13 I have no other questions at this time.

14 EXAMINER WOODS: I just had a couple, and one of
15 the reasons I'm not too concerned about which version
16 of this testimony we're using is because I'm using
17 the paper copy too, so.

18 (Laughter)

19 EXAMINATION

20 BY EXAMINER WOODS:

21 Q. On my page 6, in response to the question
22 under Issue No. 2, the first question, towards -- or

1 I think it's the third response that begins "Covad is
2 in favor of purchasing..."

3 A. The second issue?

4 Q. Right. Issue No. 2, the first question,
5 "What are the parties' concerns regarding this
6 issue?"

7 A. Okay.

8 Q. Okay?

9 A. Yes.

10 MS. HIGHTMAN: It's page 6, line 5 on the other
11 version.

12 A. I see it.

13 Q. And then the response begins: "Covad is in
14 favor of purchasing splitter capacity..."

15 A. Yes.

16 Q. Then it says: "In the shelf on a
17 line-at-a-time manner." Is that an incorrect
18 statement? Because then you go on to explain why
19 Covad doesn't think that line at a time is a good
20 idea. I thought they wanted it a shelf at a time.

21 A. Right. They, in fact, want to be able to
22 do both.

1 Q. Okay. So there should be -- that response
2 should actually be they want both, line at a time and
3 shelf at a time?

4 A. Right.

5 Q. Okay. And then the previous question,
6 "What is your assessment of this issue?"

7 A. Yes.

8 Q. Okay. You indicate that the Commission
9 cannot mandate where Ameritech locates its splitter
10 equipment. Is that a jurisdictional argument? That
11 there's some legal reason they can't do that? Or
12 should that be should not mandate where they locate
13 their equipment?

14 A. That should be should not.

15 MR. BINNIG: So can becomes should?

16 EXAMINER WOODS: Yes. That's my
17 understanding. "I do not believe the Commission
18 should mandate where Ameritech..." Is the correct
19 response.

20 That's all I had.

21 MR. REED: Just a couple minutes.

22 EXAMINER WOODS: Sure.

1 (Brief pause in the proceedings.)

2 MR. REED: Just a couple of questions,
3 Mr. Examiner.

4 REDIRECT EXAMINATION

5 BY MR. REED:

6 Q. Mr. Graves, counsel for Ameritech, by a
7 testimonial drawing, attempted to distinguish between
8 copper-fed loops and fiber-fed loops. That is
9 nowhere in Ameritech's -- a depiction of this drawing
10 is nowhere in Ameritech's testimony, is it?

11 A. Not that I'm aware of.

12 Q. To the best of your knowledge, has
13 Ameritech, pursuant to the FCC rules, made a showing
14 in their testimony that it is not technically
15 feasible to offer line sharing through fiber?

16 A. They have not done that to my knowledge,
17 and they have not provided the provisions and pricing
18 for subloop unbundling that would allow such sharing
19 either.

20 Q. And, finally, a number of counsel here
21 attempted to cast aspersions on your credentials by
22 indicating you were not an engineer. You're not a

1 brain surgeon either, are you?

2 A. No, thank God.

3 Q. Okay, but you know that you don't drill a
4 hole in somebody's head to see what's in there, do
5 you?

6 A. I understand that.

7 MR. REED: I have no further questions.

8 We can either call our second witness now
9 or take a break. It's up to you, Mr. Examiner.

10 EXAMINER WOODS: Let's see if there's any
11 additional cross.

12 MR. REED: Your Honor, that should have gone
13 before I did my redirect.

14 MR. BOWEN: No. Actually recross follows
15 redirect.

16 MR. REED: Not in the great state of Illinois.

17 MR. BOWEN: I do have one question, a follow-up
18 question, if I might be allowed.

19 EXAMINER WOODS: As long as it pertains to what
20 he just redirected.

21 MR. BOWEN: It does.

22 EXAMINER WOODS: Okay.

1 identification.)

2 EXAMINER WOODS: Mr. Reed.

3 MR. REED: Thank you. We would now like to --
4 Staff would now like to present its second witness in
5 this proceeding, Mr. Robert F. Koch, who has already
6 been sworn.

7 ROBERT F. KOCH

8 called as a witness on behalf of the Staff of the
9 Illinois Commerce Commission, having been first duly
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. REED:

13 Q. Would you please state your name, spelling
14 your last name for the record?

15 THE WITNESS:

16 A. My name is Robert F. Koch, K-O-C-H.

17 Q. By whom are you employed?

18 A. The Illinois Commerce Commission.

19 Q. What is your position with the Illinois
20 Commerce Commission?

21 A. I'm an Economic Analyst.

22 Q. Do you have before you a document which

1 has been marked by the Court Reporter as ICC Staff
2 Exhibit 2.0 consisting of a cover page and 13 pages
3 of text in question and answer form designated the
4 Verified Statement of Robert F. Koch?

5 A. Yes, I do.

6 Q. Was this document prepared by you or under
7 your direction?

8 A. Yes, it was.

9 Q. Are there any changes which you would like
10 to make to this document?

11 A. Yes. On page 8, at least on my version of
12 page 8, line 153.

13 Q. And that is line 157 of the downloaded --
14 excuse me -- of the paper version that was not
15 downloaded from the electronic docket.

16 A. Yes. The sentence reads: "To price the
17 service at zero also has negative connotations and
18 therefore is may not be..." I want to strike the
19 word "is", so that it reads "and therefore may not be
20 an ideal solution in the long run."

21 Q. Are there any other changes?

22 A. Yes, there are. On page -- hopefully this

1 is on page 12 of each version, line 251. In response
2 to the question "Do you believe that this docket is
3 an appropriate venue to develop line sharing costs
4 for fiber-fed loops?", my answer: "No. The issue of
5 provisioning fiber-fed loops...", I would like to
6 insert -- after "of" I'd like to insert "costing for
7 the provisioning of".

8 MR. REED: And corrected documents were provided
9 to counsel prior to the start of this proceeding.
10 The Court Reporter also has been provided with a
11 corrected copy of the verified statement.

12 Q. Are there any other changes which you
13 would like to make?

14 A. No, sir.

15 Q. Does this document constitute your
16 verified statement in this proceeding?

17 A. Yes, it does.

18 Q. If I were to ask you these same questions
19 today, would your answers be the same?

20 A. Yes.

21 MR. REED: We now seek admittance of ICC Staff
22 Exhibit 2.0 for entry into the record and tender the

1 witness, Mr. Robert F. Koch, for cross-examination in
2 this proceeding.

3 EXAMINER WOODS: Any objections to Staff Exhibit
4 2?

5 MR. BOWEN: No.

6 EXAMINER WOODS: The documents are admitted
7 without objection.

8 (Whereupon ICC Staff Exhibit
9 2.0 was received into
10 evidence.)

11 The witness is available for
12 cross-examination.

13 MR. BOWEN: Did you want to rotate the start or
14 just have me go again, Your Honor?

15 EXAMINER WOODS: Once you've gone first, you
16 might as well go first.

17 MR. BOWEN: I knew you were going to say that.
18 That would be fine.

19 EXAMINER WOODS: It's precedent.

20 MR. BOWEN: Pardon me?

21 EXAMINER WOODS: We've got to have proper
22 respect of precedent.

1 MR. BOWEN: Whenever you set it .

2 CROSS EXAMINATION

3 BY MR. BOWEN:

4 Q. Good afternoon, Mr. Koch.

5 A. Good afternoon.

6 Q. I'm Steve Bowen, counsel for Rhythms
7 Links. Just a few questions on your verified
8 statement this afternoon, and I'm going to work off
9 the electronic version, but I think I'll use the line
10 numbers because they're sequential through out the
11 document which should remove any uncertainty I think
12 from the two versions, so.

13 Could you turn with me to whichever page
14 you have on which lines 96 through 101 appear?

15 A. Page 5.

16 Q. Okay. In the context of this question,
17 it's in a series of questions, the context here, so
18 that the record is clear, is your testimony
19 concerning what interim rates should be set, what
20 monthly recurring interim rates should be set for the
21 high frequency portion of the loop. Is that correct?

22 A. Yes, it is.

1 Q. And the question you were asked at line
2 96, and I'll read it for the record, "Do you agree
3 that a positive rate for HFPL encourages
4 facilities-based competition?", and your answer is
5 yes with an explanation. Is that right?

6 A. Yes.

7 Q. Okay. I want to ask you about the flip
8 side of that, but, first of all, are you familiar
9 with the term TELRIC?

10 A. Yes, I am.

11 Q. What does that mean to you?

12 A. Total element long-run incremental costs.

13 Q. And would you agree that the TELRIC
14 concept has embodied within it a notion of economic
15 efficiency?

16 A. Yes, it does.

17 Q. Does it also embody a forward-looking as
18 opposed to a historic or embedded frame of
19 reference?

20 A. Correct.

21 Q. Okay. Does TELRIC, in your view, attempt
22 to in some fashion replicate the costs that would be

1 present in a fully competitive marketplace?

2 A. Yes.

3 Q. Okay. Now would you agree with me that
4 TELRIC-based or TELRIC-compliant monthly recurring
5 prices for the HFPL would send the proper price
6 signal to a CLEC who might be trying to decide
7 whether to build their own facilities or instead to
8 lease this particular UNE?

9 A. I believe that it's difficult to say when
10 there's an allocation involved. However, for the
11 loop, I believe that the TELRIC for the loop would
12 send a proper indication, yes.

13 Q. Okay. In other words, wouldn't you agree
14 that the TELRIC is the right benchmark to send the
15 right signal for the kind of lease versus build
16 decision to a CLEC?

17 A. I'm not entirely -- I wouldn't be entirely
18 confident in answering yes to that.

19 Q. Okay. Well, would you agree that if you
20 were to set prices substantially above TELRIC for a
21 UNE, just a UNE in general, that that particular
22 pricing approach could encourage inefficient

1 investment by a CLEC?

2 A. Yes.

3 Q. Okay.

4 Okay. Can you flip over with me to the
5 question that begins at line 188 of your testimony?

6 A. Page 9.

7 Q. Okay. And the context here is your
8 testimony on Ameritech's proposed Operation Support
9 System, or OSS, monthly recurring charge. Is that
10 right?

11 A. Yes, it is.

12 Q. And back on lines 183 and 184 you say, in
13 a part of that sentence, Staff is suspect as to what
14 is exactly being purchased. Do you see that?

15 A. On 183?

16 Q. Yes.

17 A. Yes.

18 Q. Okay. Now am I correct that it's
19 Ameritech's obligation to support it's proposed
20 prices sufficiently in front of the Commission?

21 A. Yes, it is.

22 Q. And am I correct that if they don't

1 support their rates sufficiently in the Commission's
2 view, that you would agree that the recommendation
3 they make should not be accepted?

4 A. I wouldn't feel entirely comfortable
5 answering that in the affirmative because there could
6 be other factors involved or Staff knowledge of
7 perhaps what a correct rate might be, so.

8 Q. Okay. But absent those other factors, am
9 I correct that, as a general matter, you would agree
10 that basically it's Ameritech's job to support their
11 proposed prices sufficiently for the Commission to
12 understand and agree with them?

13 A. Yes.

14 Q. Now am I correct that you believe that the
15 final price or the final rates for this OSS charge
16 would be established in the line sharing tariff case
17 instead of here?

18 A. Yes.

19 Q. Okay. Now on line 190 you have a sentence
20 in your answer, and I'll quote it here, you say, "To
21 price this service at zero would be in violation of
22 the FCC Line Sharing Order, since the cost of the

1 upgrade must be recovered." Do you see that?

2 A. Yes.

3 Q. Okay. Is it your proposal here that
4 whatever price is set in this arbitration is an
5 interim price?

6 A. Yes.

7 Q. For this component?

8 A. Yes, it is.

9 Q. And what about a true-up? Are you
10 proposing a true-up to some final rate set perhaps in
11 the line sharing tariff case?

12 A. Yes.

13 Q. Okay. Well, would you agree with me that
14 a zero -- if the Commission were to set a zero price
15 now with a true-up to whatever final rate the
16 Commission were to establish in the line sharing
17 tariff case, that that approach would also meet the
18 standard of the FCC Order?

19 A. I believe that whatever rate is set here
20 as an interim rate can be trued up or refunded upon
21 completion of the other docket, yes.

22 Q. Okay, and that any such rate would meet

1 the portion of the FCC Order you're referencing
2 here.

3 A. Yes.

4 Q. Okay. All right. I think you've been
5 here for the cross-examination of Mr. Graves. Is
6 that right?

7 A. Yes.

8 Q. Okay. I want to ask you some of the same
9 kinds of questions that were discussed with
10 Mr. Graves concerning focusing here on your testimony
11 at lines 201 through 212.

12 A. Okay.

13 Q. Do you have that in front of you?

14 A. Yes, I do, page 10.

15 Q. Okay. Now here you're talking about your
16 recommendation concerning the interim rate for cross
17 connects. Right?

18 A. Yes.

19 Q. And you're addressing the issue in the
20 lines that I cited to you there. You're giving your
21 opinion on whether or not the rate for cross connects
22 should be calculated assuming that the splitter is

1 located on the main distribution frame, or MDF. Is
2 that correct?

3 A. Yes.

4 Q. Now you start out by saying that you agree
5 with the CLECs that the most efficient way to
6 provision the splitter would be to locate it at the
7 main distribution frame. Right?

8 A. Yes.

9 Q. Okay. Now when you say most efficient, do
10 you mean that in a TELRIC sense? That is, if you
11 were going to start right now on a forward-looking
12 basis, you would do it this way?

13 A. I mean that barring any other
14 restrictions, yes, that would be -- a TELRIC would be
15 based on providing it at the most efficient place,
16 and that would be it, yes.

17 Q. Okay. And you go on to say that -- you
18 dovetail that statement with a statement that CLECs
19 also want to have 24-hour access to the splitter.

20 A. Yes.

21 Q. Is that, to your understanding, for
22 maintenance purposes or for testing?

1 A. Yes.

2 Q. Okay. And I take it from your answer that
3 there's a tension there in your mind; that is, that
4 you see that the efficient solution is to put the
5 splitter on the MDF, but CLECs can't get access to
6 the MDF for testing or maintenance. Is that the
7 right way to read your testimony there?

8 A. I believe that the correct way would be to
9 say that the CLECs are asking for both 24 -hour access
10 and pricing from an area that is in inaccessible 24
11 hours a day.

12 Q. Well, the inaccessibility that you're
13 testifying to here for test access or maintenance or
14 both, isn't it correct that that's an Ameritech
15 decision? That is, that Ameritech has decided that
16 CLECs can't have access to the MDF for those
17 purposes?

18 A. I'm not entirely certain, but I believe
19 that, yes, it's a design decision by Ameritech.

20 Q. You're not aware of any technical reason
21 why a CLEC technician or contractor could not get
22 access to the MDF for testing splitters, are you?

1 A. I have no opinion on that.

2 Q. Okay. Well, can you assume with me that
3 this is an Ameritech decision; that is, it's called a
4 policy decision that CLECs cannot have access to the
5 MDF to test or repair their splitters? Can you
6 assume that with me for a moment?

7 A. Okay.

8 Q. Okay. I take it your testimony is saying
9 that if CLECs really want to have that kind of access
10 to their splitters, they've got to be someplace else
11 besides the MDF. Is that a fair way to read your
12 testimony there?

13 A. Yes.

14 Q. So that kind of scenario is kind of the
15 actual installation scenario, given this what I've
16 asked you to assume is a constraint imposed by
17 Ameritech of no access to the MDF. Right?

18 A. Correct.

19 Q. Okay. Now am I right that the TELRIC
20 though really is based on a most efficient
21 assumption, as you've already agreed?

22 A. Yes.

1 Q. So isn't it correct then that there can
2 be, in effect, a difference between TELRIC-compliant
3 costing and pricing, on the one hand, and the actual
4 place where you might find a splitter, on the other,
5 given Ameritech's policies about access to
6 splitters?

7 A. If the only restriction were an Ameritech
8 policy, I would have to agree with that.

9 MR. BOWEN: Okay. I think that's all I have.
10 Thank you, Your Honor.

11 EXAMINER WOODS: Ms. Feinberg.

12 MS. FRANCO-FEINBERG: Thank you, Your Honor

13 CROSS EXAMINATION

14 BY MS. FRANCO-FEINBERG:

15 Q. Good afternoon, Mr. Koch.

16 A. Good afternoon.

17 Q. My name is Felicia Franco-Feinberg. I'm
18 here representing Covad Communications. I just have
19 a few questions to follow up on Mr. Bowen's questions
20 to you.

21 Is it your understanding, Mr. Koch, that
22 AADS, Ameritech Advanced Data Services, is Ameritech

1 Illinois' data affiliate?

2 A. Yes.

3 Q. Is it also your understanding that AADS
4 and Ameritech Illinois have the same corporate
5 parent, being SBC?

6 A. Yes.

7 Q. So is it your understanding that any
8 payment by AADS is simply an internal transfer within
9 the company then?

10 A. I believe I would refer to it as an
11 affiliate transaction.

12 Q. But it is correct then that one arm of the
13 company is transferring funds to another arm, whether
14 you deem that to be an affiliate transaction or not.
15 It is, in fact, a transfer from one arm to the other
16 arm.

17 A. I believe within the parent structure,
18 that would be SBC Communications as a whole, that
19 would be correct, yes.

20 MS. FRANCO-FEINBERG: Okay. That's all the
21 questions I have. Thank you.

22 EXAMINER WOODS: Mr. Binnig.

1 CROSS EXAMINATION

2 BY MR. BINNIG:

3 Q. Good afternoon, Mr. Koch.

4 I take it it's your understanding that this
5 proceeding is an arbitration pursuant to Section 252
6 of the Federal Telecommunications Act of 1996?

7 A. (No response.)

8 Q. And is it also your understanding that
9 under Section 252(c) that the Commission -- and I'll
10 give you a copy of this as I gave to Mr. Graves --
11 that the standards of arbitration that apply to this
12 arbitration in 252(c)(2) the Commission is to
13 establish any rates for interconnection, services, or
14 network elements pursuant to subsection (d)? Do you
15 see that?

16 A. I see -- yes, I do.

17 Q. Okay. And the pricing standard that
18 they're referring to there, is it your understanding
19 that's Section 252(d)(1) of the Act? Is that right?

20 A. Yes, it is.

21 Q. And Section 252(d)(1) of the Act is called
22 Pricing Standards and (d)(1) is titled

1 Interconnection of Network Element Charges. Do you
2 see that?

3 A. Yes, I do.

4 Q. And there it states that determinations by
5 a State commission of the just and reasonable rate
6 for interconnection of facilities and equipment for
7 the purposes of subsection (c)(2) of Section 251, and
8 the just and reasonable rate for network elements for
9 the purposes of subsection (c)(3) of such section -
10 (A) shall be based on the cost (determined without
11 reference to a rate-of-return or other rate-based
12 proceeding) of providing the interconnection or
13 network element (whichever is applicable), and (ii)
14 nondiscriminatory, and (B) may include a reasonable
15 profit.

16 A. Yes.

17 Q. And it's your understanding that that is
18 the pricing standard that applies to the pricing of
19 the UNE that is at issue in this arbitration; that is
20 the high frequency portion of the loop.

21 A. Yes.

22 Q. Okay. Now this subsection 252(d)(1)

1 nowhere refers to or mentions retail rates. Is that
2 correct?

3 A. You said retail rates?

4 Q. That's what I said.

5 A. No, sir, it doesn't.

6 Q. And it nowhere mentions or refers to
7 retail revenues. Do you agree with that?

8 A. It's based on the cost of providing, so
9 that would be correct.

10 Q. Okay. And you may have anticipated my
11 next question. It, in fact, says that the just and
12 reasonable rate for network elements shall be based
13 on the cost, and in parentheses it says determined
14 without reference to a rate-of-return or other rate-
15 based proceeding. Is that correct?

16 A. Yes.

17 Q. And the cost that it's suppose to be based
18 on is the cost of providing the network element. Is
19 that correct?

20 A. Correct.

21 Q. And it's your understanding that the FCC
22 has implemented that pricing standard through its

1 pricing rules that it issued in connection with its
2 First Report and Order in Docket 96-98?

3 A. Right.

4 Q. And for shorthand I'll refer to those as
5 TELRIC rules, but can we agree that the pricing rules
6 that the Commission adopted were you set network
7 element rates by applying TELRIC plus an allocation
8 of shared and common costs?

9 A. Yes.

10 Q. And the FCC's TELRIC rules say nothing
11 about retail rates or retail revenues. Isn't that
12 correct?

13 A. That is my understanding, yes.

14 Q. And I believe Ms. Feinberg asked you a
15 couple questions about the interconnection agreement
16 between Ameritech Illinois and AADS, Ameritech
17 Advanced Data Services.

18 A. Yes.

19 MR. REED: Might I inter -- I believe she asked
20 about the relationship, not the interconnection
21 agreement.

22 MR. BINNIG: The relationship. That's fine.

1 Q. Are you aware, Mr. Koch, that AADS and
2 Ameritech Illinois entered into an interconnection
3 agreement last October?

4 A. I'm not entirely knowledgeable of that
5 agreement, but I've read testimony. I understand
6 that they do have one.

7 Q. So you're aware there's an agreement. You
8 just don't know what the precise terms and conditions
9 of it are?

10 A. Exactly.

11 Q. Are you aware that Ameritech and AADS
12 entered into a line sharing amendment to that
13 agreement which they filed with this Commission on
14 June 1st and which is currently pending before the
15 Commission?

16 A. I'm not entirely knowledgeable.

17 Q. Would you accept, subject to check, that
18 AADS has entered into a line sharing amendment to its
19 interconnection agreement under which it is required
20 to pay the same recurring loop rates for line sharing
21 for the HFPL that Ameritech Illinois is proposing be
22 applied to Covad and Rhythms?

1 A. I would agree to that.

2 Q. So would you agree that to the extent that
3 this Commission were to provide for an interim
4 recurring rate for the HFPL portion of the loop of
5 zero, that Covad and Rhythms would actually be
6 receiving favorable treatment compared to AADS?

7 A. Not necessarily. I believe that AADS
8 could opt into that agreement.

9 Q. In terms of the zero rate that you're
10 proposing on an interim basis, would you agree that
11 in determining the competitive impact of that rate,
12 that the Commission should consider all providers of
13 broadband data services, regardless of what
14 technology is being deployed?

15 A. I believe that the final rate for the
16 service should be determined in a general docket in
17 which all those parties could be -- could intervene
18 and provide testimony, yes.

19 Q. Well, I take it you're aware that there
20 are a number of competitive providers of broadband
21 data services over cable modems in Illinois.

22 A. Could you repeat that question? I'm

1 sorry.

2 Q. I take it you are aware that there are a
3 number of competitive providers of broadband data
4 services over cable modems in Illinois.

5 A. I'm only aware of two.

6 Q. Okay. Well, you're aware of at least two,
7 and who are those two?

8 A. That would be AT&T and Time Warner.

9 Q. And are you also aware that there are a
10 number of competitive providers of broadband data
11 services using a broadband wireless technology?

12 A. I'm not as familiar with that, but I
13 understand that the technology is out there.

14 Q. And so I take it you would agree that at
15 least with respect to the permanent pricing here,
16 that to the extent the Commission is concerned about
17 competitive neutrality, it should take into account
18 those other types of technologies used to provide
19 broadband data services?

20 A. Actually, we're referring to the cost of
21 HFPL, correct, when you refer to that question?

22 Q. Well, I'm talking about the pricing.

1 A. Okay, and the answer is my opinion, as a
2 Staff member, is that the cost of the HFPL portion of
3 the loop should be equivalent and available to all
4 parties, whether it be zero or half the UNE loop
5 rate. Regardless of what it is, I think competitive
6 neutrality only requires that all parties have the
7 same rate.

8 Q. Now based on your testimony, it's my
9 understanding that you agree that the HFPL has a non -
10 zero cost. Is that right?

11 A. Actually, my belief is that we need to
12 determine what cost it has based on a TELRIC
13 assumption, you know, some allocation of that loop.
14 It may or may not be allocated eventually. So that's
15 my position right now is that it's yet to be
16 determined.

17 Q. Well, would you agree with the following
18 analysis, Mr. Koch? You agree that in the case of
19 line sharing, where the HFPL is being provided, that
20 what you have is essentially two services sharing the
21 loop facility. Do you agree with that?

22 A. Yes.

1 Q. The low frequency portion and the high
2 frequency portion. Is that right?

3 A. Yes.

4 Q. And so would you agree with the
5 proposition that the cost to provide that loop
6 facility is a joint cost between those two services?

7 A. I would not like -- I'd rather not address
8 that at this point, as far as the exact
9 classification of it as a joint cost. I don't know
10 if it's appropriate here in this docket. I know I
11 did not address it as such in my testimony.

12 Q. Well, let me ask it this way. Let's
13 assume that it is a joint cost between those two
14 services. Do you think it's reasonable to allocate
15 100 percent of that cost to the low frequency portion
16 of the loop and zero percent to the high frequency
17 portion?

18 A. I believe that -- I deferred that judgment
19 in my testimony, and I'd like to continue to do so.

20 Q. I take it you're planning to give an
21 answer to those questions in the tariff
22 investigation?

1 A. Yes.

2 Q. Let me ask you this. Assume that the
3 Commission were to conclude in that tariff
4 investigation that, in fact, the recurring cost of
5 the loop is a shared cost or a joint cost between the
6 low frequency portion of the loop and the high
7 frequency portion, and that allocating 100 percent of
8 that joint cost to one service and zero to the other
9 is not reasonable. Okay? And, in particular, they
10 conclude that allocating 100 percent to the low
11 frequency portion and zero to the high frequency
12 portion is unreasonable. Can you assume both those
13 things for me just for now?

14 A. Okay.

15 Q. Okay. If that were the case, isn't it
16 true that setting a zero rate now even on an interim
17 basis could send the wrong economic signals to
18 potential market entrants, regardless of whether
19 they're providing broadband services through DSL or
20 using other technologies?

21 A. I think there are numerous possibilities
22 for the outcome of the line sharing tariff

1 investigation, and whatever rates, TELRIC rates are
2 determined in this one that don't match up with the
3 line sharing tariff investigation could, yes, send a
4 potential price -- incorrect pricing signal.

5 Q. One thing that I couldn't tell from your
6 testimony, and I won't presume the answer, I'll just
7 ask you the question, but I didn't see anywhere where
8 you indicated in your testimony whether your interim
9 loop rate proposal, the recurring loop cost for the
10 high frequency portion of zero, whether that would be
11 subject to true-up. Is it your recommendation that
12 if the Commission were to adopt that approach, that
13 it would be subject to true-up, depending on what
14 comes out of the tariff investigation?

15 A. As I said before in relation to OSS
16 charges, it could be either a true-up or a refund,
17 depending on the outcome of that docket.

18 Q. So that recommendation -- I mean when I
19 read your testimony, it appeared that that
20 recommendation was just applying to the OSS charge,
21 but to make sure I understand your testimony, you're
22 recommending that that apply to whatever interim

1 rates are set in this proceeding. Is that correct?

2 A. I actually did not address it for this
3 service, but, yes, I'm telling you now that I agree
4 that that is a possibility, yes.

5 Q. Mr. Koch, are you aware of any cable
6 companies or wireless broadband providers that
7 provide access to and use of their networks to high
8 speed data service providers for free?

9 A. No, I'm not.

10 Q. And are you familiar with the Final
11 Arbitrator's Report in the California line sharing
12 arbitration involving Rhythms and Covad?

13 A. Not intimately, no.

14 Q. Are you aware generally that the
15 California arbitrator rejected Covad and Rhythms'
16 request for a zero interim price for the recurring
17 portion the loop and instead adopted the proposed
18 prices of Pacific Bell and GTE?

19 A. I believe I heard that, yes.

20 Q. Why don't we turn to your testimony
21 labeled Cross Connects, and on my printed version
22 it's line numbers 200 through 212.

1 A. Yes.

2 Q. Now I take it from your -- the
3 introductory portion of your testimony is that you're
4 not a network engineer and you don't have an
5 engineering degree. Is that correct?

6 A. That is correct.

7 Q. And you've never had responsibility for
8 engineering or design of a central office. Is that
9 correct?

10 A. That's true.

11 Q. Would you, nevertheless, agree with me
12 that with respect to efficient central office
13 configuration, that to design or configure a central
14 office efficiently you need to take into account all
15 services and products provided out of that central
16 office?

17 A. I can't speak to what all that design
18 entails.

19 Q. Okay. Let me ask this question. Assume
20 for me -- just assume with me that we have a central
21 office where a number of different services and
22 products are provided out of that central office.

1 A. Uh-huh.

2 Q. And we've got a number of collocators who
3 are providing services using UNEs, and they're
4 providing services other than DSL services, including
5 local exchange service using UNEs.

6 A. Okay.

7 Q. Would you agree that it would not be
8 reasonable to design a central office that would
9 ignore the needs of those other services and
10 products?

11 A. Yeah, I agree.

12 Q. And so I take it you would agree that in
13 that situation it would not be reasonable to design a
14 central office or determine how a central office
15 should be configured for a single service such as
16 xDSL service?

17 A. I believe that -- let me pause so I can
18 choose the words.

19 I believe that the company needs to take
20 into consideration all services that are provided out
21 of the central office as well as requirements from
22 the Federal Government or the Illinois Commerce

1 Commission in the provisioning of services, yes.

2 Q. I want to try to put this in pricing terms
3 now. In terms of -- you testified earlier about the
4 efficiency component of the TELRIC concept. Would
5 you agree that that efficiency component has to take
6 into account all the services and products that are
7 being provided out of the ILEC's central offices?

8 A. Actually I believe that the definition I
9 follow requires the most efficient forward-looking
10 cost, so -- for this service. I assume that takes
11 into account the fact that other services are being
12 provided out of that office as well.

13 Q. Just to make clear, it's not your
14 position, is it, that for pricing purposes the
15 incumbent LEC is required to reconfigure it's network
16 on a service-by-service basis?

17 A. I believe that the determination has to do
18 with -- each service of TELRIC is determined on an
19 individual basis, yes. It doesn't require the
20 central office be reconfigured each time I don't
21 believe so.

22 Q. Can we turn to page -- of my paper copy

1 it's page 11, your answer from lines 216 through
2 221.

3 A. Yes.

4 Q. I think where you're addressing interim
5 rates for cross connects. Do you see that?

6 A. Yes.

7 Q. And you're recommending as an interim rate
8 that Ameritech should be required to charge the
9 current rates for cross connects in its collocation
10 tariff. Do you see that?

11 A. Yes.

12 Q. Isn't it correct, Mr. Koch, that the 14
13 cents for a two wire cross connect that you refer to
14 covers only the investment cost of a pair of jumpers
15 on the MDF?

16 A. I could not say that entirely in the
17 affirmative at this moment.

18 Q. So you're not sure what that 14 cents
19 relates to precisely?

20 A. Upon recall here, no.

21 Q. Okay. So I take it, if I were to suggest
22 to you that that rate does not include any tie cable

1 investment costs from the MDF to the intermediate
2 frame, you would have no basis to either agree or
3 disagree with that.

4 A. Correct.

5 MR. BINNIG: Could I have just a second, Your
6 Honor?

7 EXAMINER WOODS: Sure.

8 (Brief pause in the proceedings.)

9 MR. BINNIG: No further questions at this time,
10 Your Honor.

11 EXAMINER WOODS: Okay. Mr. Reed?

12 MR. REED: Staff has no redirect.

13 EXAMINER WOODS: No redirect? Okay. Thank you,
14 Mr. Koch.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 EXAMINER WOODS: What do we have for
18 Mr. McClerren? Let's go off the record.

19 (Whereupon at this point in
20 the proceedings an
21 off-the-record discussion
22 transpired.)

1 EXAMINER WOODS: Okay. Call Mr. McClerren.

2 MR. REED: Staff would now like to present its
3 final witness in this proceeding, Mr. Samuel S.
4 McClerren. He has already been sworn.

5 SAMUEL S. MCCLERREN
6 called as a witness on behalf of the Staff of the
7 Illinois Commerce Commission, having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. REED:

11 Q. Would you please state your name, spelling
12 your last name for the record?

13 THE WITNESS:

14 A. Certainly. Samuel S. McClerren, spelled
15 M-C-C-L-E-R-R-E-N.

16 Q. By whom are you employed?

17 A. Illinois Commerce Commission.

18 Q. What is your position with the Illinois
19 Commerce Commission?

20 A. I'm an Economic Analyst in the Engineering
21 Department of the Telecommunications Division.

22 Q. You have before you a document which has

1 been marked by the Court Reporter as ICC Staff
2 Exhibit 3.0 consisting of a cover page and seven
3 pages of text in question and answer form. Was this
4 document prepared by you or under your direction?

5 A. It was prepared by me.

6 Q. Are there any changes which you'd like to
7 make to this document?

8 A. No, sir.

9 Q. Does this document constitute your
10 verified statement in this proceeding?

11 A. It does, yes.

12 Q. If I were to ask you these same questions
13 today, would your answers be the same?

14 A. Exactly.

15 MR. REED: We now tender ICC Staff Exhibit 3.0
16 for admittance into the record and tender the
17 witness, Mr. Samuel S. McClerren, for
18 cross-examination in this proceeding.

19 EXAMINER WOODS: Objections? The documents are
20 admitted without objection.

21 (Whereupon ICC Staff Exhibit

22 3.0 was received into

1 evidence.)

2 The witness is available for cross.

3 MR. BOWEN: Shall we follow precedent, Your
4 Honor?

5 EXAMINER WOODS: Sounds good to me.

6 MR. BOWEN: Okay.

7 EXAMINER WOODS: It's the easiest thing to do.

8 CROSS EXAMINATION

9 BY MR. BOWEN:

10 Q. Mr. McClerren, my name is Steve Bowen.
11 Good afternoon.

12 A. Good afternoon.

13 Q. I'm using, again, the printed e-version of
14 your testimony. I think I'll just refer you to
15 questions and answers. Are you using the printed
16 version or the electronic version?

17 A. I pulled it off of my own site, so I'm not
18 sure how it's characterized with what's all there.

19 Q. Could you turn to me to pages 2 and 3 of
20 your verified statement?

21 A. Yes.

22 Q. This topic area is the installation

1 intervals for line sharing. Is that correct?

2 A. Yes.

3 Q. And where you come out on this case, on
4 this issue, is a recommendation that the Commission
5 go with Ameritech's five day/ten day schedule and not
6 Rhythms' and Covad's three days moving to two moving
7 to one. Is that right?

8 A. That's correct.

9 Q. Just a couple of questions about that. Do
10 you agree that if there's no -- strike that.

11 You've heard the term LST before, have you,
12 line and station transfer? Have you heard that
13 term?

14 A. That term is new to me.

15 Q. Okay. What about conditioning?

16 A. Certainly.

17 Q. If you will assume with me that there
18 isn't any conditioning required, am I correct that
19 for line sharing to be provisioned to my client, for
20 example, Rhythms, that there's not a truck roll or a
21 dispatch to the field required for that?

22 A. That would be correct.

1 Q. Okay. So that the only work, if you will,
2 that's required to provision line sharing, if no
3 conditioning is required, is to do the jumper work on
4 the frames and to do the OSS record changes to enable
5 that order to be provisioned. Is that right?

6 A. That is my understanding.

7 Q. Okay. On my page 4 you also address, in
8 addition to parity with AADS, you also address
9 customer expectations. Is that right?

10 A. Yes.

11 Q. I guess a simple question that occurred to
12 me on this topic is, would you agree that from a
13 customer's perspective, that a customer would view it
14 as a benefit to get a line sharing order provisioned
15 in three days, two days, or one day instead of in
16 five or ten?

17 A. I would certainly agree with that, yes.

18 Q. Okay. Now if the Commission were to adopt
19 this notion of provisioning intervals that is the
20 lower of a fixed day amount, on the one hand, or
21 parity with the data affiliate, which is AADS, is
22 that right?

1 A. Yes.

2 Q. Okay. You're saying they should do that,
3 whichever is less. Right?

4 A. Either parity or the five days, whichever
5 is less, yes.

6 Q. Okay. And when you say less, I take it
7 you're talking about the actual real world
8 experienced interval for AADS. Is that right?

9 A. Yes.

10 Q. Okay. So to decide whether or not which
11 of those two benchmarks would be applied for
12 provisioning to Rhythms, for example, you need to
13 know what the actual experienced interval was for
14 AADS. Isn't that fair?

15 A. That is fair, yes.

16 Q. Okay. Now how do you propose that Rhythms
17 or Covad or the Commission track and measure the
18 actual install interval experienced by AADS for line
19 sharing?

20 A. I would recommend participating actively
21 in the collaborative on Condition 30 of the
22 SBC/Ameritech merger. As you may know, we've been

1 having meetings since January trying to determine
2 what the appropriate metrics are for service quality
3 to CLECs.

4 Q. Okay. So I just wanted to clarify that
5 with you. You're not suggesting some other
6 measurement then that collaborative process that's
7 already in place.

8 A. It strikes me that would be a very good
9 place to handle it.

10 Q. Okay. And what's your recommendation in
11 this docket for means to address situations where
12 AADS might get X days and Rhythms gets X plus three
13 days? What's your recommendation for how the
14 Commission should address that disparity, if it
15 occurs?

16 A. I would say a complaint it's
17 discrimination. If you can establish that AADS is
18 getting it quicker, I think you have a very strong
19 case.

20 Q. So one of the options you're suggesting
21 would be available is a complaint before the ICC?

22 A. Certainly.

1 Q. And what kind of relief do you have in
2 mind? Let's say that this actually happens. Rhythms
3 proves its case that there is a disparity between the
4 interval for Rhythms and the interval for AADS. What
5 kind of relief would you suggest we should be allowed
6 to get?

7 A. I don't have an opinion. That would be
8 limited by the Commission's imagination.

9 Q. So you have no recommendation on that at
10 all.

11 A. I do not have immediate thought of what
12 would be an appropriate handling mechanism, no.

13 Q. Okay.

14 A. That can be worked out in the
15 collaborative.

16 Q. Is that an issue on the table in the
17 collaborative right now, to your knowledge?

18 A. Certainly installation times are. Whether
19 line sharing is an issue, I just don't recall it
20 coming out. Our collaboratives are intertwined with
21 Ohio. Ohio has been handling installation issues, so
22 I can't definitively say right now.

1 Q. Okay. Well, whether or not line sharing
2 is an explicit issue in the collaboratives, is the
3 issue of the proper remedy for violation of those
4 performance metrics an issue in the collaborative?

5 A. Definitely, yes.

6 Q. And are you suggesting that whatever
7 outcome is agreed to or imposed there should also
8 apply to line sharing?

9 A. Yes.

10 Q. Okay.

11 All right. Now can you turn to what's on
12 my printout on page 4 and 5, the OSS availability
13 Issue 8 area of your testimony?

14 A. Yes.

15 Q. Okay. You ask the question of what is
16 your position on the issue of OSS availability. Do
17 you see that there?

18 A. Yes.

19 Q. And you say, and I'm quoting you here, "It
20 appears the issue may have been resolved with
21 SBC/Ameritech Illinois' May 17, 2000, enhancement."
22 Did I read that correctly?

1 A. You did.

2 Q. I guess I'm curious as to your use of the
3 term "it appears". Can you explain what you meant by
4 your choice of that word?

5 A. Certainly. At the time that I wrote my
6 testimony I was responding -- the last document I had
7 read in the case had to do with the direct testimony
8 of Robin Jacobson, Ameritech Illinois' witness. My
9 understanding from that was that there were several
10 issues that had been addressed in the May 17, 2000.
11 Obviously, I've seen in the subsequent statements
12 that that's not necessarily true.

13 Q. Okay. I guess what I'm trying to
14 establish, if you could help me out with this, is
15 what you had a chance to look at before you could
16 testify as you have here in your verified statement.
17 You mentioned Ms. Jacobson's testimony.

18 A. Uh-huh.

19 Q. Did you have access to anything else as
20 the basis for your testimony besides her original
21 verified statement?

22 A. That statement was based on Jacobson's

1 statement, yes.

2 Q. Okay. Now are you aware of the merger
3 conditions attached to the FCC's approval of the
4 SBC/Ameritech merger?

5 A. I am familiar with them.

6 Q. Okay. And have you heard the term Plan of
7 Record before?

8 A. Certainly.

9 Q. And do you know if there's more than one
10 Plan of Record underway right now?

11 A. There's one at the federal level. There's
12 one at the ICC level.

13 Q. Okay.

14 A. It's under work right now, so certainly,
15 yes.

16 Q. Okay. Did you have any opportunity to
17 review any of the materials that have been produced
18 by SBC/Ameritech in the Thirteen State Plan of Record
19 or SBC/Ameritech Illinois in the state specific Plan
20 of Record before you could testify here?

21 A. I have reviewed in the past the state
22 specific certainly. I'm less familiar with the

1 federal.

2 Q. Okay. Do you have an opinion about
3 whether or not what's been referred to as the FCC's
4 UNE Remand Order has a bearing on OSS?

5 A. UNE Remand Order. That does not ring a
6 bell.

7 Q. Okay. This has also been known as the
8 FCC's Third Report and Order.

9 A. It's not --

10 Q. Not ringing a bell?

11 A. No.

12 Q. Oh, I said -- perhaps you didn't hear me.
13 I was asking about the FCC's UNE Remand Order.

14 A. I have heard of that, certainly.

15 Q. Okay. Sorry. Do you know whether or not
16 the FCC's UNE Remand Order concluded that CLECs, like
17 Rhythms and Covad, should have access to all of the
18 information in an RBOC's possession, all of the OSS
19 information in an RBOC's possession?

20 A. That is necessary, yes. I understand
21 that.

22 Q. Okay, and have you made any attempt to see

1 what the universe is of information that's really out
2 there that's possessed by Ameritech, for example, in
3 their OSSs?

4 A. I've reviewed the testimony in this case.
5 I understand that there are several issues that --
6 several fields that need to be added because of the
7 line sharing need, DSO more particularly.

8 Q. Do you think that the FCC's standard, as
9 we just described, is the relevant standard to apply
10 here? That is, the CLEC should have access to all of
11 the so-called back office or OSS information in the
12 possession of Ameritech Illinois?

13 A. I don't think anyone disputes that CLECs
14 should have access to information that they need. I
15 think the dispute that I hear is whether it's direct
16 access or whether it's through an electronic
17 interface.

18 Q. That's what I thought might be the focus
19 of your testimony, because I see you're talking about
20 direct access. If we put aside direct.

21 A. Okay.

22 Q. I heard you saying that you agree that we

1 -- the CLECs should have access to the information.

2 A. Yes.

3 Q. Although it may not be direct, as you put
4 in your testimony. Is that right?

5 A. I would think the CLECs should have the
6 information they need.

7 Q. Okay. And as you use the term direct in
8 your testimony here, can you describe what you mean
9 by that?

10 A. The distinction between direct and the
11 electronic interface is basically that of a gateway
12 device versus a direct connection to the back-end
13 systems, the legacy systems such as TIRKS, for
14 example, Trunk Integrated Recordkeeping System. The
15 issue is that -- I may have misinterpreted Rhythms'
16 testimony, but I understood at points you were
17 looking for direct access to the back-end system. To
18 me that would mean that you actually have the systems
19 on your desks with the very same connections, same
20 ability to input data, extract data, as an Ameritech
21 representative would have. The distinction would be
22 on a gateway device those same abilities don't

1 exist. The trade-off, obviously, there is a little
2 bit of a time difference for an order or a query to
3 go through the interface as opposed to the direct
4 interface, but it has been my understanding at the
5 FCC level they have only specified the electronic
6 interface. They've not required the direct access.

7 Q. Okay. Now if I posited to you that with
8 respect to the systems that you're talking about,
9 TIRKS, LFACS, the Loop Facility Assignment Control
10 System, and other such telecordia type or other OSSs,
11 if I posited to you that what Rhythms wants is not
12 the ability to go in and change information in those
13 databases but instead to just read what's there,
14 whether you call it direct or mediated or gateway or
15 electronic, would you agree that that's appropriate
16 access?

17 A. As long as it's clear that it's through
18 the electronic interface, I would agree, yes.

19 Q. Okay. Have you had a chance to look at
20 the so-called SBC Thirteen State Advanced Services
21 Plan of Record materials?

22 A. In various stages I have seen it.

1 Q. Okay. Is it your understanding that the
2 interested parties, who I'll represent to you are
3 mostly data CLECs, in that Plan of Record and
4 Ameritech have not agreed on all the components of
5 Ameritech's proposal? I'm sorry; SBC's proposal?

6 A. That is my understanding.

7 Q. Okay. Is it your understanding that the
8 issue is now before the FCC for possible arbitration?

9 A. Yes.

10 Q. Now have you heard of a second SBC
11 Thirteen State Plan of Record called the Uniform and
12 Enhanced POR?

13 A. Yes.

14 Q. Is that also underway to your knowledge?

15 A. It is, yes.

16 Q. Okay. To your knowledge, is it correct
17 that that second POR has not resolved all the issues
18 between CLECs and SBC?

19 A. That was my last understanding, yes.

20 Q. Okay. Do you have any understanding of
21 when SBC/Ameritech Illinois proposes to comply with
22 -- in all respects with its view of the UNE remand

1 decision in terms of upgrading its OSSs?

2 A. I recall in the most recent round of
3 testimony a July date being mentioned as to when
4 additional items were going to be implemented, but in
5 terms of GUI, which stands for graphical user
6 interface, the last proposal I read from
7 SBC/Ameritech officially was March of 2001, although
8 I had heard they had offered it as of December 2000.
9 So the dates are out there.

10 Q. Okay. Now when you give us those dates,
11 are those the dates that you have read in
12 Ms. Jacobson's testimony?

13 A. No. Those are dates from the ICC Plan of
14 Record.

15 Q. Okay. From the Illinois Plan of Record.

16 A. Yes, sir.

17 Q. Have you had a chance to look at the dates
18 that have been put forward in the SBC Thirteen State
19 Plans of Record?

20 A. I have not.

21 Q. Okay. Now can you flip with me to the
22 last set of questions and answers on Issue 10? This

1 is the maintenance and repair time intervals.

2 A. Yes.

3 Q. You're proposing here the same kind of
4 approach; that is parity with AADS or 24 hours,
5 whichever is less.

6 A. Yes.

7 Q. Again, same kind of questions with respect
8 to the provisioning interval. If you're going to
9 look at parity with AADS, I take it you mean parity
10 with the actual experienced repair intervals for AADS
11 services?

12 A. Yes.

13 Q. And to do that you have to know what the
14 actual intervals really are?

15 A. Yes.

16 Q. Okay. And how would you suggest the
17 Commission or Rhythms or Covad would find that out?

18 A. Through the collaborative process and the
19 reports that will come out of that collaborative
20 process.

21 Q. And if there is a disparity between
22 Rhythms or Covad and AADS in terms of maintenance

1 intervals, how would you propose the Commission
2 address that issue?

3 A. In disparity, you mean SBC says it takes
4 one amount of time and you're saying you're getting a
5 different amount of time, or yours is worse in a
6 discriminating fashion?

7 Q. What I mean, what I'd like you to assume
8 is that the actual repair interval that Rhythms
9 obtains is not as good as that experienced by AADS
10 for its analogous services.

11 A. In the short term I would have to say that
12 a formal complaint is going to be your most likely
13 remedy. In the longer term, and I'm talking six
14 months to a year, the workshops, the collaborative
15 efforts should establish the metrics as well as the
16 penalties for noncompliance.

17 Q. And these are the same workshops you've
18 testified to with respect to the provisioning
19 intervals. Is that right?

20 A. Condition 30, yes.

21 MR. BOWEN: Okay. That's all I have. Thank
22 you.

1 Thank you, Your Honor.

2 EXAMINER WOODS: Okay. Ms. Feinberg.

3 MS. FRANCO-FEINBERG: Thank you.

4 CROSS EXAMINATION

5 BY MS. FRANCO-FEINBERG:

6 Q. Good afternoon, Mr. McClerren.

7 A. Good afternoon.

8 Q. My name is Felicia Franco-Feinberg. I'm
9 here representing Covad. I just have a few questions
10 for you this afternoon.

11 Your testimony basically addresses policy
12 recommendations. Is that correct?

13 A. Policy --

14 Q. Policy recommendations.

15 A. Service quality is what I prefer to
16 characterize it.

17 Q. Okay. It doesn't address technical
18 feasibility at all.

19 A. Well, to the extent we're talking about
20 time periods and intervals, that would get to what is
21 technically feasible I would suppose. I'm not sure
22 how you're defining that.

1 Q. I guess my question, you didn't consider
2 whether, in fact, a loop could be provisioned in less
3 time, did you?

4 A. Yes.

5 Q. Than you recommend.

6 A. Yes, I considered it, uh-huh.

7 Q. You might consider it or you did consider
8 it?

9 A. No, I did consider it. May I explain?

10 Q. Sure.

11 A. I understand that a loop can be installed,
12 a line sharing loop in this case, can be installed in
13 a very minimal time period, but I also understand
14 that -- I think ten minutes was your witness's
15 estimation of time, in terms of manual installation
16 or manual work, but I also understand that an ILEC,
17 any ILEC at this point on the retail side has
18 measurements in terms of installation times.

19 One installation time, one component of
20 installation time is if you have facilities in place,
21 for example, on the retail side I'm talking about,
22 just to give you a sanity check. On the retail side,

1 when you have facilities in place, which represent
2 the bulk of installations for a LEC, there's no
3 manual intervention at all. So that there is a ten -
4 minute increment of manual intervention for line
5 sharing and that that automatically means there
6 should be a much reduced time interval in
7 installation doesn't make sense to me, quite simply.
8 The way the LEC builds its work force, the queues
9 that it operates under, that's what determines an
10 appropriate time period.

11 MS. HIGHTMAN: Can you read back the last
12 statement he made?

13 (Whereupon the requested
14 portion of the record was
15 read back by the Court
16 Reporter.)

17 MS. HIGHTMAN: Thank you.

18 MS. FRANCO-FEINBERG: Thank you.

19 Q. Would you agree, Mr. McClerren, that it is
20 technically feasible then for Ameritech to provision
21 the loop in less time than what you recommend in five
22 days and ten business days?

1 A. Anything like that is technically feasible
2 if you're willing to pour the resources.

3 Q. Mr. McClerren, I think you answered some
4 questions relating to this with Mr. Bowen. You
5 indicated that parity between AADS and CLECs means
6 parity of actual intervals, not the intervals
7 promised by Ameritech. Is that correct?

8 A. Yes.

9 Q. Okay. So it wouldn't be parity then if
10 AADS received an order in three days but CLECs had an
11 order provisioned in five days, would it?

12 A. No.

13 Q. And you would agree, wouldn't you, that
14 CLECs need information from Ameritech to be able to
15 determine if, in fact, that disparity is occurring?

16 A. I believe the CLECs should have it, as
17 should this Commission.

18 Q. Okay. And I guess I would ask you the
19 same questions with respect to the repair and
20 maintenance intervals. CLECs would need information
21 as well from Ameritech to determine if, in fact, it
22 was receiving parity with repair and maintenance.

1 A. As would this Commission, yes, I agree.

2 Q. Mr. McClerren, would you agree that
3 Ameritech shouldn't decide what OSS information Covad
4 needs for its business purposes?

5 A. I would agree that SBC/Ameritech should
6 not determine your needs pending an arbitration
7 before this Commission.

8 MS. FRANCO-FEINBERG: Okay. Thank you. That's
9 all the questions I have.

10 EXAMINER WOODS: Mr. Binnig.

11 MR. BINNIG: Thank you, Your Honor.

12 CROSS EXAMINATION

13 MR. BINNIG:

14 Q. Good afternoon, Mr. McClerren.

15 A. Good afternoon.

16 Q. I take it you're aware that Ameritech
17 Illinois has an interconnection agreement that they
18 entered into with AADS?

19 A. Vaguely, yes.

20 Q. Are you aware that the provisioning
21 intervals, benchmarks in that agreement are the same
22 that are being offered to Covad and Rhythms here in

1 this arbitration?

2 A. In all honesty, I can't corroborate that.

3 Q. Okay. Mr. Bowen asked you a question
4 relating to the work that you would perform to
5 provision the HFPL, the high frequency portion of the
6 loop, in a situation where there was no truck roll
7 required.

8 A. Right.

9 Q. Do you recall that? And I think you
10 agreed with him that the work would be doing jumper
11 work in the central office plus whatever changes to
12 the OSS systems were necessary, records. Is that
13 correct?

14 A. Billing, that sort of thing, yes.

15 Q. Would you agree that to provision an
16 unbundled loop that didn't require a truck roll, that
17 you would be doing simply jumper work at the MDF plus
18 updating your OSS records?

19 A. Largely the same, yes.

20 Q. And isn't it, in fact, the case that with
21 respect to the line sharing situation, you've got to
22 install tie cables to the splitters which you don't

1 have to do when you're just unbundling an entire
2 loop?

3 A. That sounds true.

4 Q. So is it fair to say that it may require
5 more central office work to provide line sharing than
6 to unbundle an entire loop?

7 A. I would really hate to characterize it
8 that way. I don't know.

9 Q. Are you aware, Mr. McClerren, as we sit
10 here today that AADS does not currently provide DSL
11 services using line sharing?

12 A. I didn't know that, no.

13 Q. And with regard to the UNE Remand Order,
14 obviously that order says what it says, but with
15 regard to the UNE Remand Order and the provisions in
16 there relating to access to OSS, would you agree with
17 me that the FCC does not use the term back office
18 systems in its discussion of OSS?

19 A. I know it refers to the electronic
20 interface.

21 Q. Is it your understanding, Mr. McClerren,
22 that the interval that Ameritech is proposing for

1 provisioning of line sharing is the same interval,
2 same standard interval that appears in Ameritech
3 Illinois' interconnection agreements with other
4 carriers for the provisioning of unbundled loops?

5 A. I just haven't spent any time with
6 interconnection agreements. It's been years since I
7 worked on them. I'm sorry.

8 Q. So you don't -- I know you've testified.
9 You don't recall the provisioning intervals for the
10 AT&T/Ameritech Illinois interconnection agreement,
11 for example, for unbundled loops?

12 A. I testified to them at the time, but I
13 can't recall. No. I'm sorry.

14 MR. BINNIG: No further questions at this time,
15 Your Honor.

16 MR. REED: If I could just have a minute.

17 (Pause in the proceedings.)

18 Staff has no redirect, Mr. Examiner.

19 EXAMINER WOODS: Okay. Let's go off the
20 record.

21 (Whereupon at this point in
22 the proceedings an

1 off-the-record discussion
2 transpired.)

3 EXAMINER WOODS: We'll go back on the record.

4 This matter is continued to 9:00 A.M. on
5 the 29th.

6 (Whereupon the case was
7 continued to June 29, 2000,
8 at 9:00 A.M. in Springfield,
9 Illinois.)

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1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)
3 CASE NO.: 00-0312 & 00-0313 CONSOLIDATED
4 TITLE: COVAD COMMUNICATIONS COMPANY
5 RHYTHMS LINKS, INC.
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9 CERTIFICATE OF REPORTER

10 I, Cheryl A. Davis, do hereby certify that I am
11 a court reporter contracted by Sullivan Reporting
12 Company of Chicago, Illinois; that I reported in
13 shorthand the evidence taken and proceedings had on
14 the hearing on the above-entitled case on the 28th
15 day of June, 2000; that the foregoing 133 pages are a
16 true and correct transcript of my shorthand notes so
17 taken as aforesaid and contain all of the proceedings
18 directed by the Commission or other persons
19 authorized by it to conduct the said hearing to be so
20 stenographically reported.

21 Dated at Springfield, Illinois, on this 28th day
22 of June, A.D., 2000.

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